Calendar No. 934

101ST CONGRESS *2d Session*	SENATE	REPORT 101-499

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1990

REPORT

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

TO ACCOMPANY

H.R. 2567

OCTOBER 5 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2567]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 2567) entitled: Reclamation Projects Authorization and Adjustment Act of 1990, having considered the same, reports favorably thereon with an amendment and recommends that the act as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1990".

SEC. 2. DEFINITION.

For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

SEC. 101. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

Title I of Public Law 97-293 (96 Stat. 1261) is amended as follows:

(a) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting "constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

(b) In section 102, amend the heading to read "recreational facilities, conservation, and fish and wildlife", and add at the end "The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.".

(c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modification the sum of $106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)" and strike "modifications" and all that follows and insert "modifications." in lieu thereof.

TITLE II—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

SEC. 201. AUTHORIZATION.

The Secretary is authorized to construct, operate, and maintain a water treatment plant, including the disposal of sludge produced by said treatment plant as appropriate, and to install concrete lining on the rehabilitated portion of the Leadville Mine Drainage Tunnel, in order that water flowing from the Leadville Tunnel may meet water quality standards.

SEC. 202. COSTS NON-REIMBURSABLE.

Construction, operation, and maintenance costs of the works authorized by this title shall be non-reimbursable.

SEC. 203. OPERATION AND MAINTENANCE.

The Secretary shall be reponsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.

SEC. 204. APPROPRIATIONS AUTHORIZED.

There is hereby authorized to be appropriated beginning October 1, 1989, for construction of a water treatment plant for water flowing from the Leadville Mine Drainage Tunnel, including sludge disposal, and concrete lining the rehabilitated portion of the tunnel, the sum of $10,700,000 (October 1988 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved therein and, in addition thereto, such sums as may be required for operation and maintenance of the works authorized by this title.

SEC. 205. LIMITATION.

The treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

TITLE III—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND NEW MEXICO

SEC. 301. AUTHORIZATION.

The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

SEC. 302. CONSTRUCTION CONTRACT.

(a) The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

(b) Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

SEC. 303. PROJECT COSTS.

(a) All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 302 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities.

(b) All project costs for verification, design preparation, and construction management (estimated to be approximately 33 percent of the total project cost) shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement.

SEC. 304. CONSTRUCTION AND CONTROL.

(a) The Secretary shall, upon entering into a mutually acceptable agreement with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) At any time following the first advance of funds by the Authority, the Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per centum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, and reimbursement of Federal costs pursuant to subsection 302(b) of this title, the Secretary shall transfer the care, operation, and maintenance of the project works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements, or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds.

SEC. 305. APPROPRIATIONS AUTHORIZED.

There are hereby authorized to be appropriated to carry out the provisions of this title the sum of $3,000,000 (October 1989 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuation in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

SEC. 306. WETLANDS INVENTORY AND REPORT.

(a) The Secretary of the Interior is directed to inventory all wetlands on Federal lands or interests therein owned by or withdrawn for the use of the Bureau of Reclamation and, to the extent practicable, other Federal lands associated with reclamation projects. As part of the inventory, the Secretary shall make an initial determination of the value of such wetlands for purposes such as, but not limited to, recruitment and survival of waterfowl and other wetland dependent species, flood control, water quality, and sedimentation control.

(b) In assessing the value of wetlands for recruitment and survival of waterfowl and other wetland dependent species, the Secretary shall consider, among other things, the presence of factors supporting abundant and diverse wetland ecosystems, including, but not limited to:

(1) high primary productivity and functioning food chains;

(2) seasonal values for waterfowl breeding, nesting, staging and wintering; and

(3) protection from predation and disease.

(c) The Secretary shall indicate those wetland areas identified pursuant to subsection (a) of this section which also have been identified for protection or restoration pursuant to the North American Waterfowl Management Plan or by such entities as the Secretary deems appropriate.

(d) In fulfillment of this section, the Secretary is encouraged to consult with appropriate State and private entities.

(e) Not later than February 1, 1991, the Secretary shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Appropriations of the Senate, the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives a plan for implementation of this section, including identification of any reprogramming of funds required in fiscal year 1991 and such other resources as may be required.

(f) The Secretary shall report the results of the inventory authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than December 31, 1992.

TITLE IV—CEDAR BLUFF UNIT, KANSAS

SEC. 401. AUTHORIZATION.

The Secretary, pursuant to the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District No. 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create:

(a) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(b) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, for water sales, for fish, wildlife, and recreation purposes, and for other purposes.

SEC. 402. CONTRACT.

The Secretary is authorized to enter into a contract with the State of Kansas for the sale, use, and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to irrigate lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

SEC. 403. CONTRACT.

(a) The Secretary is authorized to enter into a contract with the State of Kansas, accepting a pasyment of $365,424, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction of reimbursable costs associated with irrigation of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract No. 0-7-70-W0064. After the reformulation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operating, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additional revenues shall be retained by the State of Kansas.

(b) The Secretary is authorized to transfer title of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

SEC. 404. TRANSFER OF DISTRICT HEADQUARTERS.

The Secretary is authorized to transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no

additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

SEC. 405. LIABILITY AND INDEMNIFICATION.

The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

SEC. 406. ADDITIONAL ACTIONS.

The Secretary is authorized to take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 401 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

TITLE V—SALT-GILA AQUEDUCT, ARIZONA

SEC. 501. DESIGNATION.

The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

SEC. 502. REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in Sec. 501 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE VI—WARREN ACT SUPPLEMENT

SEC. 601. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts, pursuant to the Act of February 21, 1911 (36 Stat. 925), with political subdivisions of the State of California for the impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, and other beneficial purposes from any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

TITLE VII—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT, NEVADA AND CALIFORNIA

SEC. 701. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 702. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 703. DEFINITIONS.

For purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in *United States of America* v. *Alpine*

Land and Reservoir Company, Civ. No. D–183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" measn the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 705 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in *United States of America.* v. *Orr Water Ditch Company, et al.*—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report accompanying this title and as Appendix 1 to the report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America* v. *Truckee River General Electric Co.,* No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1986, and is now designated No. S–643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 704. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discountinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Navada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: *Provided,* That, the augmentation authorized by such shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenent Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.—(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the

Lake Tahoe basin. Water allocated pursuant to this paragraph may after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 704(b)(1) notwithstanding, criteria for charging incidental runoff if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purposes of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(*a*) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(*b*) identification of conservation measures currently adopted and in practice;

(*c*) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(*d*) a schedule of implementation for proposed actions as indicated by the plan;

(*e*) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(*f*) an evaluation of management of water system pressures and peak demands;

(*g*) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(*h*) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(*i*) an evaluation of changes in pricing, rate structure, and regulations; and

(*j*) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency crossties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 or the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(*a*) extraction and discharge of Truckee River basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 704(c)(1) (B) and (D) and shall not be deemed use of Truckee River basin groundwater with the State of Nevada within the meaning of subparagraph 704(c)(1)(D); and

(*b*) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purpose of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title

shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 704(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1).

(J) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of *United States of America* v. *Sierra Valley Water Company*, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 704(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with a subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third-quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning is inconsistent with fulfillment of the Secretary's responsibilities under the Endangered Species Act, as amended, the fish and wildlife protection measures set forth in this title, or any clear statutory directive concerning such transfer.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 705. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.—(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree

and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Amendment.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secreary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 60 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall not be that prescribed in 5 U.S.C. 706(2)(A)–(D).

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs, if any; the Western Area Power Administration and Sierra Pacific Power Company have executed mutually satisfactory agreements to market power from the Stampede Powerplant to qualifying power customers of the Washoe Project and to provide power at reasona-

ble costs to qualifying project use loads, subject to the approval of appropriate local regulatory agencies; and all applicable requirements of State law shall have been met.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of non-project water to fulfull the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 705(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 706(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary and the Secretary of Energy are released from their obligations to secure payment for the costs of constructing Washoe Project facilities and power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 706. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 709(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however,

unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay for such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 706(c). This study may be conducted in coordination with the studies authorized by paragraph 707(c)(5) and subsection 709(c) of this title, and shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—(1) Notwithstanding any other provision of law, the Secretary shall manage approximatley 77,250 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands indentified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfillng the international treaty obligations of the Untied States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat con-

ditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referrred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservations shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 706(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement a land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 706 and 707 of this title; *Provided,* That:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the benefit of the Pyramid Lake fishery subject to the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project are to a sable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the state of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 706(a) is

contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as "Carson Lake and Pasture," as depicted on the map entitled the "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 705(a) and (b), 706(d), and subparagraph 708(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 707(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 708(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREA.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 707. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities anf facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.—(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereot, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 706(a)(4) and subsection 709(c) of this title, and shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the benefit of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions

for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 706(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to Californai or Nevad under section 704 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 708. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for restoration, maintenance, and management of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 706(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $50,000,000.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 707 of this title. The plan may be

revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Public Law 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 710(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

SEC. 709. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—(1) The Secretary shall study the feasibility of improving the conveyence efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Notwithstanding any other provision of law, the Secretary may cancel all payment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 709(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIM.—(1) The provisions of subsections 709 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 709(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) OPERATING CRITERIA AND PROCEDURES.—(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton,* 354 F. Supp. 252 (D. D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken by the Secretary heretofore under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter.

SEC. 710. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—(1) The effectiveness of section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 708(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe* v. *California*, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States* v. *Truckee-Carson Irrigation District*, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe* v. *Lujan*, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe* v. *Department of the Navy*, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 704, subsections 706(c), 707 (c) and (d), subparagraph 708(a)(3)(D), and paragraph 710(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 705 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 710(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 707(d) shall not take effect until the funds authorized in paragraph 708(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 704 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 704 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 705 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.—(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. The Secretary is authorized to enter into cooperative agreements with the

Pyramid Lake Tribe regarding the management and administration of the Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in section 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested and prefected Truckee River water rights received the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River

to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 704, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric projects works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement or turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended; *Provided,* That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works; *And provided further,* That the diversion of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 705(a)(6).

(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

TITLE VIII—VERMEJO PROJECT RELIEF, NEW MEXICO

Section 401 of the Act of December 19, 1980, (94 Stat. 3227) is amended by striking the text that begins: "Transfer of project facilities to the district shall be without * * *" and ends with "* * * shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend Contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1990, and expiring January 17, 1992, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract No. 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project."

TITLE IX—TRANSFER TO ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

SEC. 901. TRANSFER.

The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the Elephant Butte Irrigation District assumes the responsibility for operating and maintaining that portion of such project.

SEC. 902. LIMITATION.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

TITLE X—GRAND CANYON PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Grand Canyon Protection Act of 1990".

SEC. 1002. PROTECTION OF GRAND CANYON NATIONAL PARK.

The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1004(c) of this title and exercise other authorities under existing law in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to, natural and cultural resources, and visitor use. The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in *Arizona* v. *California*, and provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 governing allocation, appropriation, development, or exportation of the waters of the Colorado River basin. Nothing in this title alters or may be construed to alter the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or to affect in any manner the authority and responsibility of the Secretary with respect to the management and administration of such areas, including natural and cultural resources, and visitor use, as provided by laws applicable to such areas, including, but not limited to, the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented.

SEC. 1003. INTERIM OPERATION OF GLEN CANYON DAM.

(a) The Secretary shall promptly develop a plan for operating Glen Canyon Dam on an interim basis to protect, mitigate adverse effects to, and improve the condition of the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area, and shall implement such plan no later than September 1, 1991 or upon cessation of research flows used for preparing the environmental impact statement ordered by the Secretary on July 27, 1989, whichever is sooner.

(b) The interim plan described in subsection (a) of this section shall be designed to:

(1) not interfere with the water storage and delivery functions of Glen Canyon Dam pursuant to the Colorado River Compact, the Upper Colorado River Basin Compact, and other laws relating to allocation of the Colorado River;

(2) minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam;

(3) adjust fluctuating water releases used for the production of peaking hydroelectric power and adjust rates of flow changes for fluctuating flows that will minimize, to the extent reasonably possible, adverse downstream impacts;

(4) minimize flood releases, consistent with section 1002;

(5) maintain sufficient minimum flow releases from Glen Canyon Dam to minimize, to the extent reasonably possible, adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam, and protect fishery resources; and

(6) limit maximum flows released during normal operations to minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam, and protect fishery resources.

(c) The Secretary shall develop and implement the interim plan described in this section in consultation with:

(1) appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) the Secretary of Energy;

(3) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian tribes; and

(5) the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) The Secretary shall develop and implement the interim plan referred to in this section using the best and most recent scientific data available.

(e) The interim plan described in this section shall terminate upon compliance by the Secretary with section 1004.

(f) The Secretary may deviate from the interim plan referred to in this section upon a finding that such deviation is necessary and in the public interest in order to:

(1) comply with the requirements of subsection 1004(a);

(2) respond to hydrologic extremes or power system operating emergencies; or

(3) further reduce adverse impacts on downstream Colorado River natural, recreational, or cultural resources.

SEC. 1004. GLEN CANYON DAM ENVIRONMENTAL IMPACT STATEMENT; LONG-TERM OPERATION OF GLEN CANYON DAM.

(a) Not later than 3 years after the date of enactment of this title, the Secretary shall complete a final Glen Canyon Dam environmental impact statement, in accordance with the National Environmental Policy Act of 1969 and regulations issued to implement the provisions thereof.

(b) The Comptroller General shall audit the costs and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement referred to in subsection (a) of this section and shall report the results of the audit to the Secretary and the Congress.

(c) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968 and shall exercise other authorities under existing law, which shall ensure that Glen Canyon Dam is operated in a manner consistent with section 1002 of this title. Yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968, on the preceding year and the projected year operations undertaken pursuant to this title. In the process of preparing the criteria and annual plans of operation described in said section 602(b) and in this section, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) Upon implementation of long-term operations under subsection (c) of this section, the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations

and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

SEC. 1005. LONG-TERM MONITORING.

The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with requirements of section 1002. Such long-term monitoring shall include any necessary research and studies to determine the effect of the Secretary's actions under subsection 1004(c) of this title upon the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area. These monitoring programs and activities shall be established and implemented in consultation with the Secretary of Energy; the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming; Indian tribes, and the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry and the contractors for the purchase of Federal power produced at Glen Canyon Dam.

SEC. 1006. SAVINGS.

Nothing in this title is intended to affect in any way the allocations of water secured to the Colorado Basin States by any compact, law, or decree. Nothing in this title is intended to affect any Federal environmental law, including, but not limited to the Endangered Species Act, as amended.

SEC. 1007. STUDIES NONREIMBURSABLE.

All costs of preparing the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005 shall be nonreimbursable. The Secretary is authorized to used funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005, except that such funds will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 170).

SEC. 1008. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE XI—IRRIGATION DRAINAGE DEMONSTRATION PROGRAM AND LAKE ANDES-WAGNER/MARTY II PROJECTS, SOUTH DAKOTA

SEC. 1101. DRAINAGE DEMONSTRATION PROGRAM.

(a) The Secretary, acting pursuant to existing authority under the Federal reclamation laws, shall, through the Bureau of Reclamation, and with the assistance and cooperation of an oversight committee (hereafter "Oversight Committee") consisting of representatives of the Bureau of Indian Affairs, Environmental Protection Agency, United States Fish and Wildlife Service, United States Geological Survey, South Dakota Department of Game, Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton Sioux Tribe, and the Lake Andes-Wagner Water System, Inc., carry out a demonstration program (hereafter the "Demonstration Program") in substantial accordance with the "Lake Andes-Wagner-Marty II Demonstration Program Plan of Study," dated May 1990, a copy of which is on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(b) The objectives of the Demonstration Program shall include:

(1) development of accurate and definitive means of quantifying projected irrigation and drainage requirements, and providing reliable estimates of drainage return flow quality and quantity, with respect to glacial till and other soils found in the specific areas to be served with irrigation water by the planned Lake Andes-Wagner Unit and Marty II Unit and which may also have application to the irrigation and drainage of similar soils found in other areas of the United States;

(2) development of best management practices for the purpose of improving the efficiency of irrigation water use and developing and demonstrating man-

agement techniques and technologies for glacial till soils which will prevent or otherwise ameliorate the degradation of water quality by irrigation practices;

(3) investigation and demonstration of the potential for development and enhancement of wetlands and fish and wildlife within and adjacent to the service areas of the planned Lake Andes-Wagner Unit and the Marty II Unit through the application of water, and other management practices;

(4) investigation and demonstration of the suitability of glacial till soils for crop production under irrigation, giving preference to crops that are not eligible for assistance under programs covered by title V of the Agricultural Act of 1949 (7 U.S.C. 1462 et seq.) or by any successor programs established for crop years subsequent to 1990.

(c) Study sites shall be obtained through leases from landowners who voluntarily agree to participate in the Demonstration Program under the following conditions:

(1) rentals paid under a lease shall be based on the fair rental market value prevailing for dry land farming of lands of similar quantity and quality plus a payment representing reasonable compensation for inconveniences to be encountered by the lessor;

(2) the Secretary will:

(A) supply all water, delivery systems, pivot systems and drains;

(B) operate and maintain the irrigation system;

(C) supply all seed, fertilizers and pesticides and ma[illegible]dardized equipment available;

(D) determine crop rotations and cultural practices;

(E) have unrestricted access to leased lands;

(3) the Secretary may contract with the lessor and-or custom operators to accomplish agricultural work, which work shall be performed as prescribed by the Secretary;

(4) no grazing may be performed on a study site;

(5) crops grown shall be the property of the United States; and

(6) at the conclusion of the lease, the lands involved will, to the extent practicable, be restored by the Secretary to their pre-leased condition at no expense to the lessor.

(d) The Secretary shall offer crops grown under the Demonstration Program for sale to the highest bidder under terms and conditions to be prescribed by the Secretary. Any crops not sold shall be disposed of as the Secretary determines to be appropriate, except that no crop may be given to any for-profit entity or farm operator. All receipts from crop sales shall be covered into the Treasury to the credit of the fund from which appropriations for the conduct of the Demonstration Program are derived.

(e) The land from each ownership in a study site shall be established by the Secretary as a separate farm. Each such study site farm will, during the demonstration phase of the Demonstration Program, annually receive planted and considered planting credit equal to the crop acreage base established for the farm by use of crop land ratios when it became a separate farm without regard to the acreage actually planted on the farm. Establishment of such study site farms shall not entitle the Secretary to participate in farm programs or to build program base.

(f) The Secretary shall periodically, but not less often than once a year, report to the Committee on Interior and Insular Affairs of the House of Representatives, to the Committee on Energy and Natural Resources of the Senate, and to the Governor of South Dakota concerning the activities undertaken pursuant to this section. The Secretary's reports and other information and data development pursuant to this section shall be available to the public without charge. Each Demonstration Program report, including the report referred to in paragraph (3) of this subsection, shall evaluate data covering the results of the Demonstration Program as carried out on the six study sites during the period covered by the report together with data developed under the wetlands enhancement aspect during that period. The demonstration phase of the Demonstration Program shall terminate at the conclusion of the fifth full irrigation season. Promptly thereafter, the Secretary shall:

(1) remove temporary facilities and equipment and restore the study sites as nearly as practicable to their pre-lease condition. The Secretary may transfer the pumping plant and/or distribution lines to public agencies for uses other than commercial irrigation if so doing would be less costly than removing such equipment;

(2) otherwise wind up the Demonstration Program; and

(3) prepare a concluding report and recommendations covering the entire demonstration phase, which report shall be transmitted by the Secretary to the Congress and to the Governor of South Dakota not later than April 1 of the

calendar year following the calendar year in which the demonstration phase of the Demonstration Program terminates. The Secretary's concluding report, together with other information and data developed in the course of the Demonstration Program, shall be available to the public without charge.

(g) Costs of the Demonstration Program funded by Congressional appropriations shall be accounted for pursuant to the Act of October 29, 1971 (85 Stat. 416). Costs incurred by the State of South Dakota and any agencies thereof arising out of consultation and participation in the Demonstration Program shall not be reimbursed by the United States.

(h) Funding to cover expenses of the Federal agencies participating in the Demonstration Program shall be included in the budget submittals for the Bureau of Reclamation. The Secretary, using only funds appropriated for the Demonstration Program, shall transfer to the other Federal agencies funds appropriated for their expenses.

SEC. 1102. PLANNING REPORTS—ENVIRONMENTAL IMPACT STATEMENTS.

(a) On the basis of the concluding report and recommendations of the Demonstration Program provided for in section 1101, the Secretary shall comply with the study and reporting requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof with respect to the Lake Andes-Wagner Unit and Marty II Unit. The final reports prepared under this subsection shall be transmitted to the Congress simultaneously with their filing with the Environmental Protection Agency.

(b) Each report prepared under subsection (a) shall include a detailed plan providing for the prevention, correction, or mitigation of adverse water quality conditions attributable to agricultural drainage water originating from lands to be irrigated by the Unit to which the report pertains and shall be accompanied by findings by the Secretary and the Administrator of the Environmental Protection Agency that the Unit to which the report pertains can be constructed operated and maintained so as to comply with all applicable water quality standards.

(c) The construction of a Unit may not be undertaken until the final report pertaining to that Unit, and the findings referred to in subsection (b) of this section, have lain before the Congress for not less than 120 days and the Congress has appropriated funds for the initiation of construction.

SEC. 1103. AUTHORIZATION OF THE LAKE ANDES-WAGNER UNIT AND THE MARTY II UNIT, SOUTH DAKOTA.

Subject to the requirements of section 1102 of this title, the Secretary is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota, as Units of the South Dakota Pumping Division, Pick-Sloan Missouri Basin Program. The Units shall be intergrated physically and financially with other Federal works constructed under the Pick-Sloan Missouri Basin Program.

SEC. 1104. CONDITIONS.

(a) The Lake Andes-Wagner Unit shall be constructed, operated, and maintained to irrigate not more than approximately forty-five thousand acres substantially as provided in the Lake Andes-Wagner Unit Planning Report-Final Environmental Impact Statement filed September 17, 1985, supplemented as provided in section 1102 of this title. The Lake Andes-Wagner Unit shall include on-farm pumps, irrigation sprinkler systems, and other on-farm facilities necessary for the irrigation of not to exceed approximately one thousand seven hundred acres of Indian-owned lands. The use of electric power and energy required to operate the facilities for the irrigation of such Indian-owned lands and to provide pressurization for such Indian-owned lands shall be considerd to be a project use.

(b) The Marty II Unit shall include a river pump, irrigation distribution system, booster pumps, irrigation sprinkler systems, farm and project drains, electrical distribution facilities, and the pressurization to irrigate not more than approximately three thousand acres of Indian-owned land in the Yankton-Sioux Indian Reservation, substantially as provided in the Marty II Unit Planning Report-Final Environmental Impact Statement referred to in section 1102 of this title.

(c) The construction costs of the Lake Andes-Wagner Unit allocated to irrigation (both those assigned for return by the water users and those assigned for return from power revenues of the Pick-Sloan Missouri Basin Program) shall be repaid no later than forty years following the development period. Repayment of the construction costs of the Marty II Unit allocated to irrigation shall be governed by the Act of July 1, 1932 (47 Stat. 564 Chapter 369; U.S.C. 386a).

(d) Indian-owned lands, or interests therein, required for the Lake Andes-Wagner Unit or the Marty II Unit may, as an alternative to their acquisition pursuant to existing authority under the Federal reclamation laws, be acquired by exchange for lands or interests therein of equal or greater value which are owned by the United States and administered by the Secretary or which may be acquired for that purpose by the Secretary.

(e) For purposes of participation of lands in the Lake Andes-Wagner Unit and the Marty II Unit in programs covered by title 5 of the Agricultural Act of 1949 (7 U.S.C. 1461 et seq.) the crop acreage base determined under section 504 of such Act (7 U.S.C 1464) and the program payment yield determined under section 506 of such Act (7 U.S.C. 1466) shall be the crop acreage base and program payment yield established for the crop year immediately preceding the crop year in which the development period of each Unit is initiated. For any successor programs established for crop years subsequent to 1990, the acreage and yield on which any program payments are based shall be determined without taking into consideration any increase in acreage or yield resulting from the construction and operation of the Units.

(f) Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the facilities authorized by this section shall be concurrent with construction of the Unit involved and shall be on an acre-for-acre basis, based on ecological equivalency. In addition to the fish and wildlife enhancement to be provided by the fish rearing pond of the Lake Andes Unit, other facilities of that Unit may be utilized to provide fish and wildlife benefits beyond the mitigation required to the extend that such benefits may be provided without increasing costs of construction, operation, maintenance or replacement allocate to irrigation or impairing the efficiency of that Unit for irrigation purposes.

SEC. 1105. INDIAN EMPLOYMENT.

In carrying out sections 1101, 1103 and 1104 of this title, preference shall be given to the employment of members of the Yankton-Sioux Tribe who can perform the work required regardless of age (subject to existing laws and regulations), sex, or religion, and to the extent feasible in connection with the efficient performance of such functions training and employment opportunities shall be provided members of the Yankton-Sioux Tribe regardless of age (subject to existing laws and regulations), sex, or religion who are not fully qualified to perform such functions.

SEC. 1106. FEDERAL RECLAMATION LAWS GOVERN.

This title is a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts supplemental thereto and amendatory thereof). The Federal reclamation laws shall govern all functions undertaken pursuant to this title, except seciton 1110, and as otherwise provided herein.

SEC. 1107. COST SHARING.

(a) IN GENERAL.—The Proposal dated September 29, 1987, supplemented October 30, 1987 (on file with the Committee on Interior and Insular Affairs of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate), pursuant to which the State of South Dakota (hereafter in this section referred to as the "State") and the Lake Andes-Wagner Irrigation District (hereafter in this section referred to as the "District") would provide funding for certain costs of the Lake Andes-Wagner Unit, and the District would also assume certain responsibilities with respect thereto, is approved subject to the provisions of subsection (b) of this section. The Secretary shall promptly enter into negotiations with the State and the District to conclude an agreement between the United States, the State, and the District implementing the proposal.

(b) THE AGREEMENT SHALL INCLUDE PROVISIONS FOR—

(1) the establishment and capitalization of the non-Federal fund, including, subject to the Secretary's approval, investment policies and selection of the administering financial institution, and including also provisions dealing with withdrawals of money in the fund for construction purposes;

(2) the District to administer the design and construction, which shall be subject to the approval of the Secretary, of the distribution and drainage systems for the Andes-Wagner Unit;

(3) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the ring dike, not exceeding $3,500,000, the construction cost, if any, of such dike in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the condition that construction of the ring dike shall not commence earlier than the sixth year of full operation; and

(4) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the Unit's closed drainage system, not exceeding $36,000,000, the construction cost, if any, of the closed drainage system in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the conditions that:

(A) construction of the closed drainage system shall commence not earlier than the sixth year of full operation of the Unit and shall continue over a period of thirty-five years as required by the Secretary subject to such modifications in the commencement date and the construction period as the Secretary determines to be required on the basis of physical conditions; and

(B) the District, in addition to such annual assessments as may be required to meet its expenses (including operation and maintenance costs and any annual repayment installments to the United States) shall, commencing three years after construction of the Unit (other than drainage facilities) has been completed, levee assessments annually of not less than $1.00 per irrigable acre calculated to provide moneys sufficient, together with other moneys in the fund, including anticipated accruals, referred to in paragraph (1), to finance not to exceed $36,000,000 of the construction costs of the closed drainage system.

(C) In the event the detailed plan for the Lake Andes-Wagner Unit referred to in subsection (b) of section 1104 reduces the irrigated acreage of the Lake Andes-Wagner Unit to less than forty-five thousand, the District's maximum obligation hereunder shall be reduced in the ratio that the reduction in acreage bears to forty-five thousand.

SEC. 1108. AUTHORIZATION OF APPROPRIATIONS.

(a) LAKE ANDES-WAGNER UNIT.—There are authorized to be appropriated—

(1) $175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit (other than than facilities described in the second sentence of subsection (a) of section 1104 of this title) less the non-Federal contributions as provided in paragraphs (3) and (4) of subsection (b) of section 7 of this title; and

(2) $1,350,000 (October 1989 price levels) for construction of the facilities described in the second sentence of subsection (a) of section 1104 of this title, which amounts include costs of the Lake Andes-Wagner Unit Irrigation District in administering design and construction of the irrigation distribution and drainage systems.

(b) MARTY II UNIT.—There are authorized to be appropriated $24,000,000 (January 1989 price levels) for construction by the Bureau of Reclamation in consultation with the Bureau of Indian Affairs of the Marty II Unit.

(c) DEMONSTRATION PROGRAM.—There are authorized to be appropriated such amounts as may be necessary to carry out the Demonstration Program.

(d) OPERATION AND MAINTENANCE.—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of each Unit.

SEC. 1109. INDIAN WATER RIGHTS.

Nothing in this title shall be construed as affecting any water rights or claims thereto of the Yankton-Sioux tribe.

SEC. 1110. SOUTH DAKOTA BIOLOGICAL DIVERSITY TRUST.

(a) From the sums appropriated under section 1108 of this title for the irrigation drainage demonstration program and the Lake Andes-Wagner Unit and Marty II Unit, if any, the Secretary shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of this section and operated in accordance with subsection (c) of this section. The amount of each such annual contribution shall be for each fiscal year after 1990, 8 percent of the total amount appropriated under section 1108, or 10 percent of the total amount appropriated under section 1108 of this title if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of South Dakota from non-Federal funds. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this title shall not exceed $12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligible to receive Federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota;

(C) 1 person appointed by the United States Representatives from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity: its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the Trust.

(3) Proceeds from the Trust are used for the following purposes:

(A) $10,000 per year or five percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently part of the South Dakota Game, Fish, and Parks Department), to:

(i) Maintain and update the South Dakota Biodiversity Priority Site List.

(ii) Conduct inventory to discover and survey new sites for the Priority Site List.

(iii) Manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List.

(B) Up to give percent of the costs of each project are used for preserve desgin or site planning to ensure that sites are selected for funding which are well-designed to maintain the long-term viability of the significant species and communities found at the site.

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interests from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval by the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct project costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) Up to 25% of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological feature of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational or economic uses of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the board. Additional management funds may be secured from other public and private sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

TITLE XII—FORT HALL INDIAN WATER RIGHTS SETTLEMENT, IDAHO

SEC. 1201. SHORT TITLE.

This title may be referred to as the "Fort Hall Indian Water Rights Act of 1990".

SEC. 1202. DEFINITIONS.

For the purposes of this title, and for no other programs:

(a) The term "Agreement" means the "1990 Fort Hall Indian Water Rights Agreement" between the State of Idaho, the Shoshone-Bannock Tribes, the United States, and other participating parties.

(b) The term "Committee of Nine" means the advisory committee of Water District 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code section 42–604.

(c) The term "Final Decree" means the partial decree confirming the Tribal water rights described and quantified in article 7 of the Agreement to be entered after the date of enactment of this title and following submission of the Agreement as provided for in article 10 of the Agreement in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System.

(d) The term "Fort Hall Indian Irrigation Project" means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.

(e) The term "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. article XV, section 7, or any successor agency.

(f) The term "Indian" means any person who is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; is recognized as an Indian under Tribal law; or holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

(g) The term "Indian lands" means (i) all lands within the exterior boundaries of the Reservation that are held in trust for or owned by the Shoshone-Bannock Tribes or an Indian and (ii) those lands outside the exterior boundaries of the Reservation held in trust for or owned by the Shoshone-Bannock Tribes or held in trust for or owned subject to a restriction on alienation by a member of the Shoshone-Bannock Tribes.

(h) The term "Michaud Act" means the Act of August 31, 1954, chapter 1159, (68 Stat. 1026).

(i) The term "Michaud Contract" means that Memorandum Agreement of April 25, 1957, between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division.

(j) The term "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, chapter 1159, Stat. 1026.

(k) The term "Party" or "Parties" means any entity or entities that are party to the Agreement.

(l) The term "Reservation" means the Fort Hall Indian Reservation.

(m) The term "Tribes" or "Tribal" means the Shoshone-Bannock Tribes, its members and its allottees.

(n) The term "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the three dams authorized as Federal Energy Regulatory Commission Project Numbered 1971.

SEC. 1203. FINDINGS.

The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable and final settlement of all claims of the Shoshone-Bannock Tribes, its members and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members and its alottees to water rights in the Upper Snake River Basin.

SEC. 1204. RATIFICATION OF AGREEMENT.

The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States.

SEC. 1205. PROTECTION OF EXISTING USES.

(a) CONTRACT FOR STORAGE SPACE.—The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for 18,900 acre feet (hereinafter referred to as "AF") of storage space in the Palisades Reservoir and the 80,500 AF of storage space in the Ririe Reservoir: *Provided,* That the contracting entity makes application for the noncontracted storage space within one year of the date of this title and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation associated with the construction costs for such noncontracted storage space is hereby deemed repaid by this title. All exemptions that result from such a repayment shall be deemed to be applicable without further qualification on the part of such contracting entity and: *Provided, further,* That with respect to subsequent users of this water, the reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this title.

(b) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Committee of Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within one year of the date of this title.

SEC. 1206. USE, TRANSFER, AND LEASE OF TRIBAL WATER RIGHTS.

(a) TRANSFER AND LEASE OF TRIBAL WATER RIGHTS WITHIN THE RESERVATION.—The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

(b) RENTAL OF THE TRIBES FEDERAL CONTRACT STORAGE WATER.—The Tribes shall have the right to rent, pursuant to Idaho Code sections 42-1761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

(c) INSTREAM FLOWS.—The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for river reaches on or adjacent to the Reservation and up to 15,000 AF per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Blackfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

(d) REQUISITE CONGRESSIONAL APPROVAL.—Ratification of the Agreement as provided for by section 1204 of this title shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

(e) AMENDMENT OF MICHAUD ACT AND CONTRACT.—The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

(f) NO ALIENATION OR TAXATION OF PROCEEDS.—The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by either the State or the United States.

(g) NO FORFEITURE, ABANDONMENT, LOSS OR CONSTRAINTS ON INCOME.—The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

(h) LIMITATION ON OFF-RESERVATION USE.—Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

SEC. 1207. CONTRIBUTION TO SETTLEMENT.

(a) TRIBAL DEVELOPMENT FUND.—There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs $4,000,000 in the first, $3,000,000 in the second, and $3,000,000 in the third fiscal years following the effective date of this title for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within sixty days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

(b) RESERVATION WATER MANAGEMENT SYSTEM.—There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs the sum of $3,000,000 in the first, $2,000,000 in the second, and $2,000,000 in the third fiscal years following the effective date of this title for use by the Tribes for development of a Reservation water management system. Within sixty days of appropriation of moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

(c) ACQUISITION OF LANDS, GRAZING RIGHTS, AND IMPROVEMENTS.—There is hereby authorized to be appropriated to the United States Department of the Interior, Bureau of Indian Affairs, $5,000,000 for the acquisition of up to 9,800 acres of lands, grazing rights, and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the National Wildlife Refuge at Grays Lake.

(d) LIMITATION ON PER-CAPITA DISTRIBUTIONS.—Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (c) of this section be distributed on a per capita basis to members of the Tribes.

(e) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsections (a), (b) or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

(f) TRUST RESPONSIBILITY.—Nothing in this title shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes.

SEC. 1208. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under state law of Tribal members for lands not defined as Indian lands for purposes of this title nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(b) WAIVER OF CLAIMS AGAINST THE UNITED STATES.—In consideration of performance by the United States of all actions required by the Agreement and this title, including the congressional authorization, appropriation, and payment of all funds authorized in section 1207 of this title, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 1207, the Tribes are authorized to bring an action in the

United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense of sovereign immunity to such action.

(c) WAIVER OF CLAIMS AGAINST NON-FEDERAL PERSONS.—Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from, any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

SEC. 1209. INDIVIDUAL MEMBERS AND ALLOTTEES OF THE TRIBES.

The water rights described in the Agreement and confirmed in the Final Decreee are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree.

SEC. 1210. EFFECTIVE DATE.

(a) DISBURSEMENT OF FUNDS UPON EFFECTIVE DATE.—The monies appropriated pursuant to the authorization in section 1207 of this title shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the monies shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

(b) No provision of this title shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

SEC. 1211. DISCLAIMER.

(a) GENERAL DISCLAIMER.—Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

(b) RESERVATION OF TRIBAL CLAIMS.—Nothing in this title shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this title affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(c) RESERVATION OF RIGHTS.—The parties expressly reserve all rights not granted, recognized or settled by the Agreement or this title.

(d) DISCLAIMER REGARDING OTHER AGREEMENTS.—Except as expressly provided in this title, nothing herein shall be considered to amend, construe, supersede or preempt any State law, Federal law, tribal law or interstate compact that pertains to the Snake River or its tributaries.

SEC. 1212. PROTECTION OF TRIBAL WATER RIGHTS.

The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation.

PURPOSE OF THE MEASURE

The purpose of H.R. 2567, as amended by the Committee on Energy and Natural Resources, is to remedy environmental and other problems and increase public benefits associated with Bureau of Reclamation facilities in several States, settle claims with certain Indian tribes, authorize the Secretary of the Interior to undertake an irrigation drainage demonstration program as a precondition to construction of a moderately sized irrigation project in South Dakota, and for other purposes.

SUMMARY OF MAJOR PROVISIONS

H.R. 2567, as amended by the Committee on Energy and Natural Resources, is a 12-title measure addressing a variety of water resource problems and Bureau of Reclamation facilities.

Title I increases the authorized cost ceiling for construction of modifications and improvements to the Buffalo Bill Dam and Reservoir, a Bureau of Reclamation project in western Wyoming, part of the Pick-Sloan Missouri River Basin Project. Except for clerical, non-substantive changes, the text of title I is identical to the text of S. 1121, which was approved by the Senate on November 20, 1989. (S. Rept. 101-200).

Title II authorizes the Secretary of the Interior to construct and operate a facility to remove naturally occurring contaminants from water discharged into the Arkansas River near Leadville, Colorado, by the Leadville Mine Drainage Tunnel, a facility owned by the Bureau of Reclamation. Except for clerical, non-substantive changes, the text of title II is identical to the text of S. 1275, which was approved by the Senate on November 15, 1989. (S. Rept. 101-201).

Title III authorizes the Secretary of the Interior to plan and oversee construction of a project to reduce naturally occurring saline flows entering the Canadian River in New Mexico which impair water quality at Lake Meredith, a Bureau of Reclamation project in Texas. Except for clerical, nonsubstantive changes, the text of title III is identical to the text of S. 486, which was approved by the Senate on November 15, 1989. (S. Rept. 101-199).

Title IV authorizes the Secretary of the Interior and the State of Kansas to implement a Memorandum of Understanding providing for reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program so as to terminate an irrigation repayment contract and shift reservoir operations toward recreational, fish and wildlife, and groundwater management purposes. Except for clerical, non-substantive changes, the text of title IV is identical to the text of S. 53, which was approved by the Senate on November 15, 1989. (S. Rept. 101-198).

Title V renames the Salt-Gila aqueduct of the Central Arizona Project after two former Governors and U.S. Senators from the State of Arizona, Paul Fannin and Ernest W. McFarland. This title is identical to S. 1556 as introduced on August 4, 1989, by Senators DeConcini and McCain.

Title VI supplements a 1911 provision of Federal Reclamation law, commonly known as the Warren Act. This title authorizes the Secretary of the Interior to enter into contracts with political subdivisions of the State of California for use of certain Bureau of Reclamation facilities in the State for the purposes of municipal and domestic water supply, fish and wildlife, and other beneficial purposes.

Title VII is a complex measure which resolves inter- and intra-State disputes concerning the waters of Lake Tahoe and the Truckee and Carson rivers in California and Nevada, improves the Newlands Reclamation Project in Nevada, protects endangered and threatened species, protects and improves Pacific flyway wetlands, and addresses the claims of the Pyramid Lake Paiute Tribe of Nevada. The text of this title is a substantially revised version of S. 1554, introduced by Senator Reid on August 4, 1989.

Title VIII clarifies the terms of a 1980 Act which transferred certain lands to the Vermejo Conservancy District in New Mexico.

The text of this title is similar to S. 1932, introduced by Senators Domenici and Bingaman on November 20, 1989.

Title IX authorizes the Secretary of the Interior to convey certain rights of way and other interests to the Elephant Butte Irrigation District in New Mexico. The text of this title is similar to S. 1590, introduced by Senators Bingaman and Domenici on September 7, 1989.

Title X directs the Secretary of the Interior to operate Glen Canyon Dam, and exercise other authorities, in order to protect Grand Canyon National Park and Glen Canyon National Recreation Area downstream of the dam, consistent with certain interstate, regional, and international water allocation requirements. The text of this title is similar to S. 2807, introduced by Senator McCain on June 28, 1990.

Title XI authorizes the Secretary of the Interior to conduct a demonstration program in South Dakota concerning management of irrigation drainage water quality and quantity, and to construct the Lake Andes-Wagner and Marty II irrigation projects in South Dakota, if the demonstration program proves that the projects can be operated to meet applicable water quality standards. The text of this title is similar to S. 2710, introduced by Senators Daschle and Pressler on June 6, 1990.

Title XII provides for settlement of the water right claims of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho. The text of this title is a slightly amended version of S. 2870, introduced by Senators McClure and Symms on July 18, 1990.

Background and Need

The specific background and need for each title of this bill are discussed in the portion of this report entitled "Section-by-Section Analysis." In the most general terms, the various provisions of this bill are meant to address environmental, social, water resource management, and legal problems associated with Federal reclamation facilities.

Legislative History

At the business meeting on September 19, 1990, the Senate Committee on Energy and Natural Resources ordered H.R. 2567, as amended, favorably reported.

H.R. 2567 was referred to the Committee on Energy and Natural Resources on June 20, 1990. The Subcommittee on Water and Power held a hearing on title XVI of H.R. 2567 on July 31, 1990, and on title XIII of H.R. 2567 on September 27, 1990.

The Committee's substitute amendment to H.R. 2567 incorporates 12 titles which, to a greater or lesser extent, reflect individual bills which receive hearings during the 101st Congress by the Water and Power Subcommittee. Titles I–IV are measures already passed by the Senate as individual bills.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business on September 19, 1990, by a majority vote of a

quorum present, recommends that the Senate pass H.R. 2567 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston [1]	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin [1]	
Mr. Akaka [1]	
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Garn [1]	
Mr. McConnell	

[1] Indicates voted by proxy.

Section-by-Section Analysis

TITLE I—BUFFALO BILL DAM, WYOMING

A. PURPOSE—TITLE I

Title I would increase the authorized cost ceiling for construction of modifications and improvements to the Buffalo Bill Dam and Reservoir, a Bureau of Reclamation project in western Wyoming, part of the Pick-Sloan Missouri River Basin Project.

B. BACKGROUND AND NEED—TITLE I

Buffalo Bill Dam is located on the Shoshone River near Cody in northwestern Wyoming. The dam was completed in 1910, and the project provides irrigation water to nearly 90,000 acres of land. The project also generates hydroelectric power and provides recreation and fish and wildlife benefits.

In 1982, Congress enacted legislaton, Public Law 97-293 authorizing extensive modifications to Buffalo Bill Dam through a joint venture between the United States and the State of Wyoming. The plan was to raise the height of the dam by 25 feet to provide additional storage for irrigation, municipal and industrial use, increased hydroelectric power generation, recreation, fish and wildlife, and other purposes. The Act authorized appropriations of $116 million (indexed to October 1989 price levels). The modifications are now about 63 percent complete.

Public Law 97-293 provided that the Federal cost ceiling would be reduced by the amount of cost sharing from the State of Wyo-

ming. $47.7 million was contributed by the State, making the current Federally-authorized share $68 million.

Because of modifications made to the design of the project, the current appropriation ceiling will not be sufficient to complete the project. The Bureau of Reclamation reports that the total cost of the project has increased by $17 million. In 1989, the State of Wyoming approved $5 million in cost sharing for these modifications, plus an additional $1 million for recreational facilities. A $12 million increase in the Federal share is thus required to complete the project with the new modifications. The total Federal share (new cost ceiling requested by this bill) will be $80 million (current share of $68 million plus $12 million for new modifications).

C. SECTION-BY-SECTION—TITLE I

Subsection 101(a) authorizes a 4.5 megawatt increase in hydroelectric generating capacity associated with Buffalo Bill Dam, bringing total new generation at the project to 25.5 megawatts.

Subsection 101(b) authorizes construction of recreational facilities and requires equal State-Federal cost-sharing for those facilities.

Subsection 101(c) authorizes an $80 million (October 1988 price level) Federal cost ceiling for the project, and deletes from existing law an authorization for total project costs, a sum that includes both Federal and State contributions. This subsection deletes from existing law the requirement that the total authorized cost (State and Federal contributions) be reduced by sums contributed by the State. These provisions, taken together, recognize that the total project cost will be approximately $133 million, of which total the Federal Government is authorized to contribute $80 million (October 1988 price levels) in the understanding that the State of Wyoming will contribute $53 million.

D. LEGISLATIVE HISTORY—TITLE I

Except for clerical, non-substantive changes, title I is identical to S. 1121 as passed by the Senate. That measure was introduced by Senators Wallop and Simpson on June 6, 1989. The Subcommittee on Water and Power held a hearing on the bill on September 14, 1989. S. 1121 passed the Senate on November 20, 1989. (S. Rept. 101-200).

TITLE II—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

A. PURPOSE—TITLE II

Title II authorizes the Secretary of the Interior to construct and operate a facility to remove naturally occurring contaminants from water discharged into the Arkansas River near Leadville, Colorado, by the Leadville Mine Drainage Tunnel, a facility owned by the Bureau of Reclamation.

B. BACKGROUND AND NEED—TITLE II

The Leadville Tunnel, constructed by the U.S. Bureau of Mines in 1944, drains groundwater from mines in the Leadville, Colorado, area into the East Fork of the Arkansas River. The Bureau of Rec-

lamation obtained the tunnel from the Bureau of Mines in 1959, intending to use the water for a reclamation project. The Bureau of Reclamation was unable to secure a state right to the water.

In the early 1970's, it was determined that water draining from the tunnel was contaminated by a number of heavy metals, all defined as pollutants under the Clean Water Act (CWA). The polluted drainage water has damaged the Arkansas River fishery and substantially impaired the river's water quality. In 1975, the Bureau of Reclamation was issued a permit by the Environmental Protection Agency limiting allowable pollutant discharges. To bring tunnel discharge into compliance with the permit, the Bureau undertook investigations of various treatment methods. Those investigations indicated that the most effective approach would be the treatment plant combined with tunnel lining. In February 1989, the Bureau and Environmental Protection Agency entered into an agreement whereby the Bureau committed to construct and operate a water treatment plant capable of achieving the effluent limitations. S. 1275 would permit implementation of that agreement and, ultimately, improvement of Arkansas River water quality.

There are numerous other sources of mine-caused water pollution in the Leadville area. One, the Yak Tunnel (owned by ASARCO), is a Superfund site. At the time the Bureau studied options for cleaning the Leadville Tunnel drainage, it also reviewed options for treating both Leadville and Yak Tunnel drainage. That approach was determined to be not cost-effective.

The Committee notes that, in fiscal year 1990, the Bureau of Reclamation will conduct studies related to mine water treatment and related problems in the greater Leadville, Colorado, area, including technical oversight and support. The Committee on Energy and Natural Resources supports these studies as appropriate to the new mission of the Bureau of Reclamation. The Committee emphasizes its understanding that these studies shall in no manner interfere with or slow the progress of any mine drainage control or treatment efforts underway or planned for the greater Leadville, Colorado, area. The Committee expects that the Bureau of Reclamation will consult with the Environmental Protection Agency to ensure that Bureau studies do not adversely impact the pace or substance or remedial efforts associated with the Yak Tunnel.

C. SECTION-BY-SECTION—TITLE II

Section 201 authorizes the Secretary of the Interior to construct, operate and maintain a water treatment plant and dispose of its sludge. This section also authorizes the Secretary to line with concrete a portion of the Leadville Mine Drainage Tunnel.

Section 202 provides that all cost will be non-reimbursable.

Section 203 provides that the Secretary of the Interior will be responsible for operation and maintenance of the water treatment plant, but may contract for these services.

Section 204 authorizes appropriation of $10.7 million (October 1988 price levels) for construction of the treatment plant and tunnel lining and sludge disposal, plus such sums as may be necessary for operation and maintenance of the plant and tunnel lining.

Section 205 limits the size of the treatment plant to that required to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

D. LEGISLATIVE HISTORY—TITLE II

Except for clerical, nonsubstantive changes, title II is identical to S. 1275 as passed by the Senate. That measure was introduced by Senator Wirth on June 23, 1989. The Subcommittee on Water and Power held a hearing on S. 1275 on September 14, 1989. S. 1275 was approved by the Senate on November 15, 1989. (S. Rept. 101–201).

TITLE III—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND NEW MEXICO

A. PURPOSE—TITLE III

Title III authorizes the Secretary of the Interior to plan and oversee construction of a project to reduce naturally occurring saline flows entering the Canadian River in New Mexico which impair water quality at Lake Meredith, a Bureau of Reclamation project in Texas.

B. BACKGROUND AND NEED—TITLE III

This title would authorize the Bureau of Reclamation to construct and test a salinity control project to reduce the salinity of Lake Meredith, Texas, which supplies water to Amarillo, Lubbock, and nine other towns served by the Canadian River Municipal Water Authority. The population of the 11 cities is approximately 430,000. Lake Meredith was constructed by the Bureau of Reclamation in the mid-1960's as part of the Canadian River Project.

Salt contamination of lake water has been noted since the reservoir first went into operation. The problem appears to be worsening with time and becomes most serious during drought cycles. Chloride leveles have reached 600 mg/liter, substantially in excess of the 250 mg/liter EPA recommended secondary drinking water standard. The salt contamination exacerbates a more general water supply problem at Lake Meredith. Since impoundment began in 1965, Lake Meredith has experienced a gradual decline in reservoir levels. The reservoir has a capacity of about 840,000 acre-feet, but has yet to impound more than 520,000 acre-feet and averages about 300,000 acre-feet. In 1980, Congress authorized a Bureau study of the salt contamination problem.

The Bureau's analysis, completed in 1985, indicates that the principal source (70 percent) of contamination is a natural brine aquifer that discharges into the Canadian River near Logan, New Mexico. An additional 10–15 percent of the total salt load enters the river in Texas, in an area not far above the headwaters of Lake Meredith. The Bureau's report recommends drilling wells into the saline aquifer in order to remove brine and reduce artesian pressure. The brine would be pumped to deep injection wells placed beyond the problematic, leaky aquifer. All wells would be located in New Mexico.

The Bureau of Reclamation estimates that the total cost of the salinity control project will not exceed approximately $9 million (July 1989 prices).

Involvement of the Federal Government in this case is appropriate because of the interstate character of the problem and the need to protect the Federal investment in the Lake Meredith facility. Water quality management is a major feature of the new mission of the Bureau of Reclamation.

C. SECTION-BY-SECTION—TITLE III

Section 301 authorizes the Secretary to construct and test the Lake Meredith Salanity Control Project.

Section 302 authorizes the Secretary to enter into a contract with the Canadian River Municipal Water Authority concerning design, construction management, and payment of costs associated with the project.

Section 303 provides for cost-sharing between the Secretary and the Canadian River Municipal Water Authority.

Section 304 provides that, if the Authority cancels construction, the Federal Government will be under no obligation to continue working or expending sums on its portion of the project and would recover from the Canadian River Municipal Water Authority its proportionate share of any funds expended. The cost of this project will be shared between the Bureau of Reclamation, whose share will be approximately 33 percent, and the Canadian River Municipal Water Authority. The Government would be responsible for all project costs for verification, design preparation, and construction management. The Authority would meet all construction and land acquisition costs. The Authority would be responsible for operation and maintenance costs upon completion of construction and testing of the project. The majority of the Federal contribution will apply to planning and design, the earliest stages of the project. In no event, will the Federal contribution exceed approximately 33 percent of the total project cost. This section ensures that, if the Authority cancels construction, the Federal Government will recoup from the Authority any sums spent on the project that exceed the Government's approximate 33 percent share.

Section 305 authorizes appropriation of $3.0 million to carry out the provisions of this title.

Section 306 directs the Secretary of the Interior to inventory all wetlands on Federal lands owned by the Bureau of Reclamation and other Federal lands associated with reclamation projects. The Committee believes that the Federal Government has significant opportunities for wetland restoration, improvement and management, especially on Federal lands or interests therein owned by the Bureau of Reclamation. The Bureau has an important responsibility to contribute the Nation's efforts to benefit wetlands and will be assisted in meeting that responsibility by the information collected under the inventory authorized by this Section.

Wetlands and the associated upland areas provide valuable habitat for fish, wildlife and other living species. Equally important, wetlands benefit, among other things, ground and surface water quality and aid in sediment and flood control. In recognition of

those diverse benefits, this section directs the Secretary to make an initial determination of the values presently or potentially to be provided by the wetlands identified in the course of the reclamation wetland inventory. This section encourages the Secretary to consult with other private and public entities involved in wetland-related programs and directs the Secretary to identify those reclamation wetlands that have been targeted for protection or restoration under the North American Waterfowl Management Plan or other similar plans.

D. LEGISLATIVE HISTORY—TITLE III

Except for clerical, non-substantive changes, title III is identical to S. 486 as passed by the Senate. That measure was introduced by Senator Bentsen on March 1, 1989. The Subcommittee on Water and Power held a hearing on S. 486 on September 14, 1989. S. 486 was approved by the Senate on November 15, 1989. (S. Rept. 101–199).

TITLE IV—CEDAR BLUFF UNIT REFORMULATION, KANSAS

A. PURPOSE—TITLE IV

Title IV would authorize the Secretary of the Interior to take certain steps to salvage a Bureau of Reclamation project unit in Kansas which is now of quite limited utility.

B. BACKGROUND AND NEED—TITLE IV

The Cedar Bluff Unit, part of the Pick-Sloan Missouri River Basin Program, is located on the Smoky Hill River in west-central Kansas. It was authorized as a multipurpose unit to provide flood control, irrigation, municipal water supply, fish and wildlife, and other benefits. Completed in 1951, the Cedar Bluff Unit includes the dam and reservoir, an irrigation distribution system designed to serve the 6,800-acre Cedar Bluff Irrigation District (CBID), a fish hatchery built by the U.S. Fish and Wildlife Service, and certain recreational improvements made by the State of Kansas.

Total construction cost of the dam, reservoir and irrigation district was about $18 million. Reimbursable construction costs allocated to irrigation are approximately $7.9 million, of which the CBID is contractually obligated to repay $731,000. The remainder, approximately $7.2 million, would be repaid by Pick-Sloan Missouri River Basin Program power revenues.

This title recognizes the fact that Cedar Bluff does not work as planned and, indeed, probably never will do so. Planning estimates of the area's average natural runoff may have been overly optimistic. Changes in soil conservation practices and increasing groundwater withdrawals in the drainage above Cedar Bluff have significantly reduced flows into the reservoir. As a result, Cedar Bluff has not been able to provide irrigation water since 1978. In recent years, the Cedar Bluff Irrigation District has been unable to meet its repayment obligations or cover operations and maintenance costs. The Bureau has deferred the repayment and operations and maintenance charges. The District has been able to repay only $110,000 of its $731,000 repayment obligation, leaving an unpaid

balance of $621,000. In light of these problems, the District has opted to disband and, along with the State, Bureau of Reclamation, and Fish and Wildlife Service entered into negotiations in 1987 to try to make the best of a bad situation. Title IV is the product of those negotiations.

If enacted, title IV would relieve the District of its repayment obligation in exchange for a payment of $365,424 by Kansas to the Department of the Interior. This amount was negotiated between Kansas and the Bureau of Reclamation as satisfaction for all reimbursable costs associated with the irrigation features of the Unit. The State would continue to be responsible for a proportionate share of the annual operation, maintenance, and replacement costs of the dam and reservoir. Title IV does not authorize transfer of title, except with respect to certain specified properties.

C. SECTION-BY-SECTION—TITLE IV

Section 401 authorizes the Secretary to reformulate the Cedar Bluff Unit on terms provided in a Memorandum of Understanding (MOU) between the Bureau of Reclamation, U.S. Fish and Wildlife Service, State of Kansas, and CBID. The MOU would put a higher priority on in-reservoir and downstream fish and wildlife, recreation, and provide a means to recharge a downstream aquifer utilized by the City of Hayes. Reformulated in this fashion, Cedar Bluff would be of greater benefit to the State of Kansas than is now the case.

Section 402 places certain restrictions on the use of water from the Cedar Bluff Unit, once reformulated. Concerns were raised to the Committee that aquifer recharge downstream from Cedar Bluff made possible by his reformulation might lead to increasing irrigation withdrawals from that aquifer. This would have had the effect of creating a new class of irrigation beneficiaries from the Cedar Bluff Unit who, unlike the original irrigation district, would have had no contractual obligations to the Federal Government, and who might have become subject to the acreage limitations and other provisions of reclamation law. The State of Kansas advised the Committee and testified that the State had no intent to increase irrigation withdrawals in the Smoky Hill drainage below the Cedar Bluff Unit and had, in fact, recently restricted withdrawals allowed under State water right in that area. Section 402 provides assurance that ground or surface water from the Cedar Bluff Unit will not be used to increase irrigation in the area below the Cedar Bluff Unit.

Under section 403, the State of Kansas will retain revenues from the sale of water from the Cedar Bluff Unit, except to the extent that an operation, maintenance or replacement charge or reimbursable obligation exists for the Cedar Bluff Unit, including such charges and obligations as may be incurred in the future to ensure dam and reservoir safety. Subsection 403(a) provides that revenues received by the State of Kansas from sale of water from the Cedar Bluff Unit and paid to the Federal Government should be covered to the Reclamation Fund, not the General Fund.

Subsection 403(b) authorizes transfer of a fish hatchery from the United States to the State of Kansas. This subsection ensures that

title to the hatchery will revert to the United States if the hatchery is transferred by the State of Kansas or used in a manner inconsistent with the purpose of the legislation which, in this context, is to benefit the public interest in fish and wildlife.

Section 404 provides for the transfer of title to real property, fixtures, equipment, and other items associated with the Cedar Bluff Irrigation District headquarters. The transfer is conditioned on the district's agreement to shut down the irrigation system.

Section 405 provides for transfer of liability and indemnification.

Section 406 authorizes the Secretary to take additional actions as required to accomplish the reformulation of the Cedar Bluff Unit on the terms specified in the MOU.

D. LEGISLATIVE HISTORY—TITLE IV

Except for clerical, nonsubstantive changes, title IV is identical to S. 53 as passed by the Senate. That measure was introduced by Senators Dole and Kassebaum on January 25, 1989. The Subcommittee on Water and Power held a hearing on S. 53 on September 14, 1989. S. 53 was approved by the Senate on November 15, 1989. (S. Rept. 101-198).

TITLE V—RENAMING THE SALT-GILA AQUEDUCT

Title V would rename the Salt-Gila aqueduct of the Central Arizona Project after two former Governors and U.S. Senators from the State of Arizona, Paul Fannin and Ernest W. McFarland.

Except for clerical, nonsubstantive changes, title V is identical to S. 1556. That measure was introduced by Senators McCain and DeConcini on August 4, 1989. The Subcommittee on Water and Power conducted a hearing on the bill on July 24, 1990.

TITLE VI—WARREN ACT SUPPLEMENT

Title VI would supplement a 1911 provision of Federal reclamation law, commonly known as the Warren Act, which, in pertinent part, authorizes the Secretary to contract with irrigation districts to use storage and conveyance capacity at Reclamation facilities which is surplus to project needs for storage and conveyance of non-project water for agricultural uses.

The Committee had under consideration S. 2716, legislation which would have amended the Warren Act to permit non-Federal entities to contract with the Bureau of Reclamation to use excess storage and conveyance capacity in project facilities for municipal, industrial, domestic, fish and wildlife, or miscellaneous purposes. The potential benefits of that legislation include additional revenue to the Federal government, better water management, and increased cooperation between the Bureau of Reclamation and local itnerests.

Testimony presented to the Water and Power Subcommittee on S. 2716 by several political subdivisions of the State of California revealed an urgent need to extend the coverage of the Warren Act to help those entities and others cope with California's current drought, now in its fourth year. Following the hearing, the Committee was informed that certain Warren Act contracts are at issue in complex, interstate litigation elsewhere in the West. In light of

concerns expressed by litigants in those proceedings, the Committee is unable to recommend comprehensive amendment of the Warren Act at this time. The Committee has determined that legislation relating solely to California will not interfere with any actions or proceedings regarding Warren Act contracts in any of the Reclamation States. The Committee intends to reconsider this matter during the 102d Congress, with the aim of broadening and updating benefits provided by the Warren Act.

Title VI authorizes the Secretary of the Interior to enter into Warren Act contracts with political subdivisions of the State of California for the impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, and other beneficial purposes from three Bureau of Reclamation projects in California. As used in this title, the term "political subdivisions" is intended to include cities, counties, water districts, and other public entities engaged in water management or supply activities.

TITLE VII—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

A. PURPOSE—TITLE VII

Title VII concerns the apportionment and use of water from two rivers, the Truckee and Carson, that arise in California near Lake Tahoe and flow into western Nevada. The circumstances behind the title are unusually complex, involving inter-state water apportionment, management of Federal water storage and diversion facilities, protection and restoration of wetlands and endangered and threatened fish species, and the settlement of Indian tribal claims to water and other interests.

B. BACKGROUND AND NEED—TITLE VII

1. Physical setting

The Truckee and Carson rivers run generally parallel to each other in an easterly direction commencing in California near Lake Tahoe and terminating within closed basins in Nevada. The Truckee's natural course is from Lake Tahoe into Pyramid Lake; the Carson River flows into the Stillwater Wildlife Management Area and Carson Sink.

California and Nevada both make extensive use of the two rivers' water. California uses Truckee River water at its headwaters, Lake Tahoe, and downstream to the interstate border, near Farad. A private utility, Sierra Pacific Power Company, has hydroelectric facilities in California and Nevada on the Truckee above Reno. Nevada makes use of Lake Tahoe in its portion of the Tahoe basin. The Truckee is the principal source of water for irrigation, municipal, industrial and domestic uses in the Reno-Sparks metropolitan area and provides water to the Newlands Reclamation Project, near Fallon, Nevada. The Carson River provides water for irrigation and some municipal use in California, and is extensively used for irrigation in Nevada. The Carson is the principal source of water for the Newlands Reclamation Project.

2. Interstate allocation

California and Nevada have contested allocation of the Truckee and Carson rivers since the 1800's, with the most heated controversy involving the Truckee system. Much of the debate has been fueled by Federal government efforts to secure water for its interests in Nevada, first for the Newlands Reclamation Project, and later to remedy the environmental impacts of that project.

In the 1950's, the States began negotiation of an interstate compact for allocation of the rivers' waters, ultimately reaching agreement in 1968. Nevada ratified the compact in 1969; California did so in 1970. The States have operated in voluntary compliance with the Compact's terms since that time.

The Department of the Interior and Department of Justice opposed Congressional ratification of the Compact. The United States objected to Compact provisions binding the United States to the Compact's allocations and charging Federal uses to the State where they are made.

Between 1971 and 1979, Nevada and California Congressional representatives offered six different bills seeking Congressional ratification of the Compact. None received a hearing. During the 1st Session of the 99th Congress, the Committee on energy and Natural Resources and the Select Committee on Indian Affairs held hearings, but took no other action on S. 1558, in many respects, a predecessor to this title. During the 2nd Session of the 99th Congress, the Senate Judiciary Committee held hearings, but took no further action on S. 2457, a bill which included only matters releated to interstate allocation. In the closing days of the 99th Congress, the Senate considered an amendment offered by Senator Laxalt to an appropriations bill that would have addressed interstate allocation. Senator Laxalt ultimately withdrew his amendment.

The States have been unable to achieve Congressional ratification of the Compact principally because of concerns expressed by the Pyramid Lake Paiute Tribe and the United States that the Compact would conflict with their efforts to secure water to repair the Newlands Project's environmental damage at Pyramid Lake and to protect other Federal interests.

3. Truckee River water use

A. Newlands reclamation project

The Newlands Reclamation Project is at the center of most of the intra- and interstate controversies addressed by title VII, including particularly the status of Pyramid Lake fisheries and the Lahontan Valley wetlands.

The Newlands Reclamation Project, one of the earliest projects built by the Bureau of Reclamation, supplies water to irrigate approximately 60,000 acres of land near Fallon, Nevada. Most of the land is used for irrigated pasture or alfalfa production. Current estimates of gross farm income from the Newlands Project is $20.5 million annually, with net income estimated at $9.2 million. Agriculture represents approximately ten percent of the Fallon-area economy.

The original Newlands Project plan contemplated irrigation of about 200,000 acres, however the total irrigated area has never exceeded about 65,000 acres. The Project relies on a combination of Truckee and Carson river water. Lake Tahoe and Lahontan Reservoir are the two main storage features of the Newlands Project. A small dam on the Truckee River outlet to Lake Tahoe controls the top 6.1 feet of the lake, providing about 740,000 acre-feet of storage. Lahontan Reservoir, on the Carson River, has a storage capacity of approximately 317,000 acre-feet.[1] Agricultural drainage from Newlands Project lands flows to wetland areas known generally as the "Lahontan Valley wetlands," an area that includes the Stillwater Wildlife Management Area, Stillwater National Wildlife Refuge, and Carson Lake and Pasture.

The Newlands Project's Truckee River water is diverted out of the Truckee basin by the Truckee Canal, which begins at Derby Dam (about 20 miles downstream of Reno) and continues to Lahontan Reservoir on the Carson River. A small portion of the diverted Truckee water is released from the Truckee Canal within the Truckee Basin to irrigate lands near Fernley, Nevada. Surplus flows and drainage waters in this area contribute to the State of Nevada's Fernley Wildlife Management Area.

The amount of water available for diversion at Derby Dam varies both annually and seasonally. This is a function of annual precipitation in the Sierra Nevada, operation of storage reservoirs in the Truckee River Basin, and upstream water supply and demand patterns, particularly in the Truckee Meadows area, which includes Reno and Sparks in Washoe County, Nevada.

The amount of water diverted at Derby Dam is a function of water demands of the Newlands Project and the portion of that demand that can be satisfied by water from the Carson River system. The amount of water required for delivery to Project lands is a function of the number of irrigable water-righted acres actually being irrigated and the water duty established for each acre. Water duty for a given parcel of land is based on its designation as either bench or bottom land. The number of acres being irrigated results from decisions being made by individual farmers.

The amount of water supplied to meet water duty demands is a function of the efficiency of the irrigation water distribution system. Improving irrigation water distribution system efficiency would reduce the diversion requirements from the Truckee River, but would also reduce drainage flows reaching Lahontan Valley wetlands. Newlands Project efficiency averaged about 55 percent between 1981 and 1985.

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[1] A number of reservoirs have been constructed in the Truckee River drainage, primarily as features of two Federal reclamation projects: the Truckee Storage and Washoe projects. Boca Reservoir, part of the Truckee Storage Project, is located on the Little Truckee River and has a capacity of 40,000 acre-feet. The Washoe Project includes Stampede Reservoir, also on the Little Truckee River; Prosser Creek Reservoir, on Prosser Creek, and Marble Bluff Dam and Fishway on the Truckee near Pyramid Lake. Donner Lake stores 9,500 acre-feet and is operated by the Sierra Pacific Power Company and the Truckee-Carson Irrigation District. Independence Lake, owned by Sierra Pacific Power, stores 17,500 acre-feet.

B. Pyramid Lake Reservation and Fisheries

In 1859, the Secretary of the Interior reserved 475,000 acres of land surrounding and including Pyramid Lake and the Lower Truckee River for Pyramid Lake Paiute Tribe. This area was the historic homeland of the Pyramid Lake Tribe and, prior to construction of the Newlands Project, supported abundant populations of fish upon which the tribe relied for consumption and commerce. Two fish species were, and remain, of primary importance to the tribe: the cui-ui (*chamistes cujus*), a unique type of sucker fish found only in Pyramid Lake, and Lahontan cutthroat trout (*salmo clarki henshawi*), a large species of trout, with closely related strains found in several lakes and rivers in west-central Nevada and east-central California. Both fish species evolved to spawn in the Truckee River and require cool water for successful reproduction.

Pyramid Lake evaporates approximately 4 feet per year, roughly 440,000 acre-feet. Between 1925 and 1967, more than 50 percent of the flow of the Truckee River, an average of approximately 260,000 acre-feet per year, was diverted at Derby Dam to the Newlands Project. The level of Pyramid Lake dropped—some 40 feet between 1920 and 1938—reducing the surface area by 20,000 acres and forming a delta which prevented the trout and cui-ui from reaching their spawning grounds in the Truckee River. The original strain of Lahontan cuttthroat trout in Pyramid Lake became extinct by approximately 1940. A closely related strain of Lahontan cutthroat trout was subsequently introduced to the lake. The cui-ui was declared "endangered" under the Endangered Species Act in 1967. The Lahontan cutthroat trout has been declared a "threatened" species under the same Act.

The impacts of Newlands Project diversions on the Pyramid Lake fishery triggered protracted and repeated litigation by the Pyramid Lake Paiute Tribe and the United States against the Newlands Project's operator, Truckee-Carson Irrigation District, and virtually every user of Truckee River water in Nevada and California.

The Tribe has been increasingly successful in its efforts to increase Truckee River flows. A Federal court-ordered administrative process, known as "OCAP" ("Operating Criteria and Procedures") has begun reducing Newlands Project diversions from the Truckee. That same administrative process has required the Newlands Project to increase its operating efficiency, significantly reducing project drainage and spills that once sustained the Lahontan Valley wetlands.

C. Truckee River water rights

Truckee River water rights are governed by a 1944 Federal court decree which, in turn, incorporates an earlier operating agreement. The certainty of these rights has been challenged repeatedly by the Pyramid Lake Paiute Tribe and the United States through efforts to secure water for Pyramid Lake fisheries.

Orr Ditch Decree.—In 1913, the United States initiated a suit to quiet title to Truckee River water rights in Nevada, *United States*

v. *Orr Water Ditch Company* (hereafter "Orr Ditch").[2] Trial took place between 1919 and 1921. The final decree in the proceeding was issued in 1944.[3] The Government's principal purpose in the action was to establish a water right for the Newlands Project and for irrigation on the Pyramid Lake Reservation. No reserved rights for sustenance of the Pyramid Lake fishery were claimed or awarded.

Truckee River Agreement.—A key element of the Orr Ditch decree is the Truckee River Agreement of 1935, which was adopted by the court as a part of the decree. The Truckee River Agreement is essentially an operating agreement for the Truckee negotiated by the major water users on the Truckee.

The Truckee River Agreement specifies flow rates that must be maintained in the Truckee near Floriston, California. The "Floriston Rates" were first established in 1908 in an agreement between the Floriston Pulp and Paper Company and the Truckee River General Electric Company, the corporate predecessor of Sierra Pacific Power Company. The Floriston Rates required that, if minimum natural Truckee River flows dropped below a certain point, water would be released, if possible, from Lake Tahoe to maintain flows. In 1915, Reclamation obtained Lake Tahoe Dam from Sierra Pacific's predecessor through a consent decree that obligated the Government to adhere to the Floriston Rates. In 1926, Reclamation assigned operation of Lake Tahoe Dam to the Truckee-Carson Irrigation District.

The Truckee River Agreement established maximum levels for Lake Tahoe storage, and laid the foundation for construction of Boca Reservoir to create additional storage in the Truckee System. The Agreement provided that Floriston Rates could be met through releases from both Lake Tahoe and Boca Reservoir, but limited releases to only that quantity of water required to provide Floriston Rate flows.

Reserved Rights for Pyramid Lake.—In 1973, the United States, subsequently joined by the Pyramid Lake Paiute Tribe, brought suit against all persons claiming water rights to the Truckee River and its tributaries in Nevada. The suit sought additional water from the Truckee for the purpose of preserving Pyramid Lake and its fisheries. The Government and Tribe argued that the Orr Ditch decree only quantified the Pyramid Lake Reservation's right to water for agricultural purposes. In 1983, the United States Supreme Court rejected that claim. *Nevada* v. *United States*, 463 U.S. 110 (1983). In a unanimous opinion, the Court held that the jurisprudential doctrine of res judicata barred the United States and

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[2] In 1925, the United States brought an action for adjudication of Carson River water rights. A final decree was entered in 1980. *United States* v. *Alpine Land and Reservoir Company*, 503 F. Supp. 877 (D. Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), cert. den. 104 U.S. 193 (1983).

[3] The Orr Ditch decree awarded the United States a water right with a 1859 priority date for irrigation of approximately 5,800 acres on the Pyramid Lake Reservation. For the Newlands Project, Orr Ditch decreed to the United States a right with a 1902 priority date to divert Truckee waters at Derby Dam at the rate of 1,500 cubic feet per second for irrigation of 232,800 project acres, for storage at Lahontan Reservoir, for power generation and for other municipal and domestic purposes. This diversion is subject to "such control, disposition and regulation as the [United States] may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the [project] bottom lands, nor 4.5 acre feet per acre for the [project] bench lands.

the Tribe from litigating the reserved right claim against those parties who had relied on the Orr Ditch decree.

In a concurring opinion, Justice Brennan noted that the District Court had found that one of the purposes for establishment of the Pyramid Lake Reservation was "to provide the Indians with access to Pyramid Lake * * * in order that they might obtain their sustenance, at least in part, from these historic fisheries." Justice Brennan explained that:

> As a consequence, the Tribe retains a Winters right, at least in theory, to water to maintain the fishery, a right which today's ruling does not question. To some extent it may be possible to satisfy the Tribe's claims consistent with the Orr Ditch decree—for instance, through judicious management of the Derby Dam and Lahontan Reservoir, improvement of the quality of the Newlands Project Irrigation works, application of heretofore unappropriated floodwaters, or invocation of the decree's provisions for restricting diversions in excess of those allowed by the decree. *Nevada* v. *United States*, 463 U.S. at 145.

In 1975, the Pyramid Lake Tribe received a payment of $8.5 million in connection with the Tribe's claim against the United States for failure to assert a claim for water rights for the Pyramid Lake fishery.

The Committee observes that enactment of this title and, indeed, years of discord and litigation involving users of the Truckee River probably could have been avoided had the United States pursued and secured water rights needed to sustain the Pyramid Lake fishery. In retrospect, it is clear that the limited benefits of the Truckee River were promised by the United States to too many interests.

Truckee River Reservoirs.—In 1956, Congress authorized construction of Washoe Project, a Bureau of Reclamation project involving three dams, Stampede and Prosser Creek in the Truckee drainage and Watasheamu on the Carson. Act of August 1, 1956 (70 Stat. 775).[4] The Washoe Project was intended to supply water for irrigation, municipal and industrial uses, recreation, power, flood control, and restoration of Pyramid Lake fisheries. Section 4 of the Washoe Project Act directed that facilities at Lake Tahoe provide for increased water releases and restoration of the fishery, and authorized construction of Marble Bluff Dam and Fishway on the Truckee near Pyramid Lake. The House Report stressed that the fishery's restoration "to its full potential value is deemed to be of national interest and importance." H.R. Rep. No. 2055, 84th Cong. 2d Sess. 4–5 (1956).

Stampede Reservoir, providing 220,000 acre-feet of storage, was originally intended to supply water for the full range of project purposes. The Carson-Truckee Water Conservancy District (CTWCD) was created under Nevada law to enter into repayment contracts to purchase water from Stampede.

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[4] Watasheamu Dam has not been built due to unfavorable benefit-cost evaluations. The State of Nevada and Carson Water Subconservancy District are studying the feasibility of a smaller, 50,000 acre-foot reservoir on the Carson, located entirely within Nevada.

In the early 1970's, the Secretary of the Interior elected to use Stampede exclusively for the benefit of Pyramid Lake fish species listed under the Endangered Species Act. The Secretary's decision was challenged by CTWCD and the Sierra Pacific Power Company who argued that the Washoe Project Act obligated the Secretary to use Stampede for their benefit. The Ninth Circuit affirmed the District Court's ruling which supported the Secretary's determination that the Endangered Species Act obliged the Secretary to defer all other uses of the reservoir until Pyramid Lake fish were no longer classified as endangered or threatened. *Carson-Truckee Water Conservancy District* v. *Clark*, 741 F.2d 257 (9th Cir. 1984), cert. den. 53 U.S.L.W. 368 (March 26, 1985).

The restriction on Stampede storage severely limits drought protection and future water supplies for the growing Reno-Sparks area.

No repayment contracts have been executed for Stampede Reservoir.

OCAP Litigation and Implementation.—In February 1967, the Secretary of the Interior adopted general operating criteria and procedures ("OCAP") to govern the exercise of water rights held by the United States in the Truckee and Carson River systems. 32 Fed. Reg. 3098; 43 C.F.R. 418. One objective of these criteria was to maximize the use of Carson River waters to meet water requirements on the Newlands Project and conserve Truckee flows so as to make as much water available to Pyramid Lake as possible. 43 C.F.R. 418.3(a). Initial OCAP set the Newlands Project's maximum annual diversions from both the Carson and Truckee Rivers at 406,000 acre-feet, subject to later reductions.

The Pyramid Lake Tribe subsequently brought suit against the Federal government charging that the original OCAP were inadequate. In 1973, the District Court for the District of Columbia upheld the Tribe's claim, finding that waste of water was occurring on the Newlands Project and the Secretary's fiduciary obligations to the Tribe required delivery of all water to Pyramid Lake not otherwise obligated by court decrees or contracts. *Pyramid Lake Paiute Tribe* v. *Morton*, 354 F. Supp. 252 (D. D.C. 1973). The court directed the Secretary to enforce the 1973 OCAP which reduced TCID's combined Carson and Truckee River diversions to a maximum of 288,000 acre-feet annually. The court ordered the Secretary to terminate a 1926 contract with TCID, which had permitted operation of the Newlands Project by TCID, if the District substantially violated the new OCAP.

TCID was not a party to the case and refused to comply with the court-ordered OCAP. In 1973, TCID deliberately diverted more water than allowed under the OCAP, and the Secretary terminated the contract with the district. Through subsequent litigation brought by TCID, the courts have confirmed the Secretary's right to terminate the contract. *Truckee-Carson Irrigation District* v. *Secretary*, 742 F.2d 527 (9th Cir. 1984), cert. den. 53 U.S.L.W. 3867 (June 11, 1985).

Following the 1973 decision, the Bureau of Reclamation issued an "interim" OCAP each year. In 1988, the Bureau proposed a final OCAP with maximum annual diversions from both the Truckee and Carson Rivers reduced incrementally to 320,000 acre-feet by

1992. Project efficiencies would be improved from a 1981–85 average of 55 percent to approximately 66.7 percent.

The proposed final OCAP has been challenged by all interests on a variety of grounds, including the number of acres eligible to receive Project water, duties of water on Project lands, compliance with past OCAP's, water requirements for the Lahontan Valley wetlands, operation of Lahontan Reservoir, and NEPA compliance.

Recent Ninth Circuit decisions have not been favorable to Newlands Project irrigation interests. In *Pyramid Lake Paiute Tribe* v. *Hodel*, 878 F.2d 1215 (9th Cir. 1989), the court upheld provisions of the 1973 OCAP disallowing delivery of water to any Newlands Project lands without valid water rights, and prohibiting delivery of water to farmers who irrigate non-water righted lands. Enforcement of the ruling could reduce maximum annual diversions from the Truckee by about 20,000 acre-feet. The Tribe is also pursuing restitution from TCID and Newlands Project irrigators for past diversions from the Truckee which were not in compliance with applicable OCAP. The Secretary of the Interior has indicated that the total of such wrongful diversions may exceed 800,000 acre-feet of water.

In *Pyramid Lake Paiute Tribe* v. *Hodel*, 882 F.2d 364 (9th Cir. 1989), the Ninth Circuit found that water illegally diverted to the Newlands Project could be repaid to Pyramid Lake in subsequent years. The Department of Justice has advised the Department of the Interior that:

> Indisputably, many hundreds of thousands of acre feet of water were diverted out the Truckee River from 1973 to at least 1985 in violation of the Secretary's regulations. (TCID was at that time actively challenging the Secretary's authority to impose regulations on the project.) [T]here remains many questions with regard to * * * the practical considerations of how such large quantities of water could be covered without causing significant harm to the project. * * * (Letter from Richard B. Stewart, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, to Martin Allday, Solicitor, U.S. Department of the Interior (1989).)

4. Lahontan Valley Wetlands

The Truckee and Carson Rivers historically supported expansive wetland areas which, in turn, supported millions of migratory waterfowl using the eastern edge of the Pacific Flyway. Development of the Newlands Reclamation Project substantially and directly affected these wetlands. Western Nevada wetlands have been reduced from 113,000 acres to about 15,000 acres in 1987—a loss of more than 85 percent.

In some cases, the Newlands Project eliminated wetlands entirely. In others, the Project intercepted wetlands' clean water supplies and substituted agricultural drainage. For a period, agricultural drainage from the loosely operated Newlands Project supported remnant wetland areas in the Lahontan Valley. But, with the promulgation of the OCAP regulations, and as a result of subsequent litigation concerning project water rights, the Newlands Project

has been required to operate more efficiently; agricultural drainage has been significantly reduced, with concurrent reductions in flows to the Lahontan Valley wetlands.

The remnant wetlands continue to serve as vital resting, feeding and breeding areas for waterfowl. But the wetlands are drying, and, as they dry, naturally occurring trace elements such as arsenic, boron, lithium, molybdenum, mercury and selenium are becoming concentrated, some reaching toxic levels. Bird, fish and wildlife kills are becoming chronic, and studies document increasing bioaccumulation and deformities. The State of Nevada has warned against eating ducks taken from the area. Botulism and avian cholera account for a significant number of waterfowl mortalities. The crowding of birds and continued degradation of water quality will aggravate this situation. As habitat continues to diminish, birds are forced into smaller areas, which increases the probability of disease transmission.

Stillwater Wildlife Management Area, including the Stillwater National Wildlife Refuge, and Carson Lake and Pasture comprise the largest primary wetlands within the Lahontan Valley. Over 410,000 ducks, 28,000 geese and 14,000 swans have been observed using the area annually during wet year spring and fall migrations. Over 4,500 breeding pairs of ducks, primarily redheads, gadwalls and cinnamon teal have been recorded in the area, producing up to 25,000 waterfowl annually. Up to 50 percent of the Pacific Flyway fall canvasback population migrates through the area. These wetlands serve a critical function as a major staging area for over 250,000 shorebirds and over 50 percent of the North American Long-billed dowitcher population. In 1988, Lahontan Valley was dedicated as a Western Hemisphere Shorebird Reserve, one of only four such sites in the U.S. The Lahontan Valley wetlands support the largest single breeding colony of White-Faced Ibis in North America. Up to 70 Bald Eagles overwinter in the area.

Anaho Island National Wildlife Refuge, located in Pyramid Lake, supports the largest nesting colony of American white pelicans in North America. White pelicans require shallow waters for feeding. The only remaining shallow marshes in western Nevada within range of Anaho Island are the Lahontan wetlands. The number of young pelicans produced at Anaho Island dropped from 6,000 in 1987 to 300 in 1989.

Stillwater has been nominated as a wetland of international importance under the Convention on Wetlands of International Importance.

Approximately 20 percent of Churchill County's economy is derived from tourism and recreation that includes hunting, birdwatching and fishing.

The Lahontan Valley wetlands require significantly increased firm supplies of clean water. Congress appropriated $1.2 million in fiscal year 1989 for acquisition of water rights to benefit the Stillwater Wildlife Management Area. An additional $1.5 was appropriated for fiscal year 1990. The President's fiscal year 1991 budget proposal includes $2 million for additional water right acquisitions.

5. Fallon Naval Air Station interests

The Fallon Naval Air Station is located about 5 miles southeast of the city of Fallon. The Navy leases approximately 3,000 acres of irrigated land to farmers, with the bulk of the land now producing alfalfa or pasture. The land carries Newlands Project water rights, with water deliveries costing the Navy approximately $60,000 per year.

The Navy's "agricultural outlease" program is designed to stabilize the soils adjacent to runways. Wind-blown dust and debris pose serious hazards to flight operations. Irrigated crops reduce blowing debris and offer some fire control benefits.

Earlier this year, the Ninth Circuit Court of Appeals rejected the claim of the Pyramid Lake Tribe that the Endangered Species Act requires that the United States reallocate the Naval Air Station's irrigation rights to Pyramid Lake for fishery purposes.

6. Fallon Paiute-Shoshone Tribe interests

The Fallon Paiute-Shoshone Indian Reservation is located about 10 miles east of Fallon. The reservation includes 8,120 acres; 3,480 acres tribally owned and 4,640 acres individually owned. The enrolled membership of the Fallon Paiute-Shoshone Tribe is approximately 850, almost all of whom live on the reservation or in the Fallon area. The average per capita reservation income is about one-third of the county average and the average reservation family income is about one-half of the county average.

The relevant history of the Tribe stems from allotments made from the public domain to individual Paiute and Shoshone Indians under the General Allotment Act of 1887. By 1895, 196 allotments of 160 acres each had been made, totaling about 31,000 acres. As it happened, these lands were in the area subsequently selected for the Newlands Reclamation Project. In 1906, an agreement was reached whereby the Indians would release their original 160-acre allotments of nonirrigated land and receive in exchange 10-acre allotments of land with paid-up water rights and suitable irrigation facilities. Of the 196 original allottees, 189 consented to the exchange. A 1907 Department of the Interior order reserved an area of 4,640 acres on behalf of Indians who had relinquished their original allotments and such other Indians as might, on investigation, be found entitles to allotments thereon. An additional 840 acres adjoining the north boundary of the reservation were set aside in 1917.

Water for the reservation lands is provided from the Newlands Reclamation Project.

From the beginning, much of the reservation land proved unsuitable for irrigation. A 1932 survey indicated that 2,410 acres of the 5,480 total were nonirrigable because of topography, soil, salt, or poor drainage. Despite construction of additional drains, a 1970 survey indicated that 1,600 acres remained unsuitable for irrigation.

In 1978, Congress enacted Public Law 95-337, Act of August 4, 1978 (92 Stat. 455), which recognized that the Fallon Tribe had not received adequate compensation for the lands exchanged in 1906. The law authorized acquisition of 2,640 acres of land to be held in

trust for the tribe and directed the Secretary of the Interior as his "first priority" to complete the irrigation system on the original reservation's 4,640 acres and extend the system to the added lands so as to bring into cultivation 1,800 acres of the added lands. The new irrigation project was to be known as "Fallon II."

Subsequent to passage of Public Law 95–337, certain forces converged to impede fulfillment of its terms. First, research determined that drainage water from Fallon II lands carried very high concentrations of potentially toxic trace elements. Second, implementation of the revised OCAP for the Newlands Project required the project to cut, not expand, its water usage. The long-promised compensation owed the Fallon Paiute-Shoshone Tribe—expansion of on-Reservation irrigated agriculture—would come at the expense of those interests seeking to protect Pyramid Lake fisheries and Lahontan Valley wetlands.

The Department of the Interior has suggested that the Tribe consider accepting an economic development fund in lieu of the irrigation development contemplated by Public Law 95–337. To this point, the Tribe has generally called for strict compliance with the terms of the Act. Others have suggested that, instead of irrigating new areas, the Federal Government should purchase already irrigated land within the Newlands Project adjacent to the reservation.

A 1988 Interior Department estimate places the cost of fulfilling Public Law 95–337 at $30 million, with an annual operations and maintenance cost of $100,000–$150,000. A University of Nevada-Reno study estimates that the economic value to the tribe of the original 1906 agreement would have totalled $100–$150 million over the past 80 years.

Over the past year, settlement discussions have been underway with the Fallon Tribe. The Committee hopes that a settlement agreement will be available for consideration by the Senate during the 101st Congress. This title includes various provisions intended to protect the Fallon Tribe's interests and avoid any interference in present settlement discussions.

C. SECTION-BY-SECTION—TITLE VII

Section 701 provides that title VII of this bill may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

Section 702 outlines the purposes of the bill.

Section 703 defines various words and phrases for the purpose of this title.

Section 704 apportions the waters of the Carson River, Lake Tahoe, and the Truckee River between the State of California and the State of Nevada. It implements a negotiated agreement reached between the two States, the United States, and other affected interests in each State, including, particularly, the Pyramid Lake Paiute Tribe of Indians. These negotiations took several years to complete and were based, in part, on earlier efforts made by the two States to achieve an equitable apportionment of these waters. Section 704 is intended to provide a permanent and final resolution to long-standing controversies over the two States' respective rights in these vital and limited water resources. The Committee notes

that section 704 serves the same function as an interstate compact, namely, achieving a voluntary, equitable apportionment of water between the two States.

The watersheds of the Carson and Truckee Rivers, and Lake Tahoe present special and unique circumstances which the Committee believes warrant enacting the negotiated interstate allocation as a Federal statute. The States of California and Nevada have attempted unsuccessfully to apportion these waters through negotiation and adoption of an interstate compact. The United States has attempted unsuccessfuly to adjudicate these waters in the United States Supreme Court, which declined to exercise its original jurisdiction. The Truckee and Carson Rivers are both subject to water Rights adjudications brought by the United States in Federal courts. The major storage facilities on the Truckee River are owned or operated by the United States. The Truckee River is the subject of various claims in lawsuits brought by the United States or the Pyramid Lake Tribe. Certain of these suits would be dismissed as part of the overall settlement effected by this title, of which section 704 is an integral part.

Section 704 recognizes and preserves the proper role of the States in water management and administration of State law governing water rights and water use.

Subsection 704(a) concerns the Carson River. Water right claims in the Carson River basin in both California and Nevada were generally adjudicated by a 1980 decree in *United States* v. *Alpine Land and Reservoir Company*, Civ. No. D–183 (D. Nev. 1980) (hereafter "Alpine decree"). The Alpine decree is not the product of an equitable apportionment of Carson River basin waters between the two States. Instead, it is a determination of individual water rights in both the California and Nevada portions of that basin. Nevertheless, the Alpine decree is sufficiently comprehensive in scope as to provide a sound initial basis for an interstate allocation. Paragraph 704(a)(1) confirms the interstate allocations agreed upon by California and Nevada, and which are consistent with the individual rights confirmed by the Alpine decree.

Paragraph 704(a)(2) is intended to ensure that the exercise of water rights in existence as of January 1, 1989, but not included in the Alpine decree, will not be precluded by enactment of this title. The Alpine case was an in personam action which binds the parties to it and their successors. Subsection 704(a) makes the Alpine decree the initial basis for the interstate allocation of the Carson River because most uses of water are included in it. However, research by the California Department of Water Resources identified approximately 1,300 acre-feet of use by depletion within the California portion of the Carson River basin which were not included in the Alpine decree. To the extent that these uses have a legal basis under State law, the amount of water they represent would be allocated in addition to the rights determined by the Alpine decree. No increase in diversions from the Carson River beyond those established as of December 31, 1992, will be permitted.

Paragraphs 704(a) (3) and (4) are intended to provide a means of compensating California water users in the event that the current import of treated effluent from the Lake Tahoe basin into the Carson River basin in Alpine County, California, is discontinued.

Paragraph 704(a)(5) provides that nothing in this title shall preclude either State from studying the use of surface water which may otherwise be lost to beneficial use, to enable conjunctive use with groundwater. Current studies by the U.S. Geological Survey indicate considerable potential for such conjunctive use of Carson River basin water.

Subsection 704(b) apportions the water of Lake Tahoe and establishes an annual ceiling on all diversions within the Lake Tahoe basin. Paragraph 704(b)(2) lists criteria for measuring diversions. Subparagraph 704(b)(2)(A) recognizes that a major portion of water diverted and used to make artificial snow ultimately returns to the Lake Tahoe basin as runoff. Accordingly, the first 600 acre-feet of water used to make snow within California, and the first 350 acre-feet used to make snow within Nevada are exempted from uses of water charged to the allocations of water for either State. These amounts are based on the States' calculations of the amount of water diverted for artificial snowmaking prior to the enactment of this title. Each State's allocation would be charged with the amount of water which does not return as runoff for any artificial snow making requiring diversions in excess of the specified amounts. This subparagraph is not intended to affect in any way the allocation of water between the States. Nor is this provision intended to affect the authority of water purveyors to provide additional water for artificial snow making, either to ski resorts which currently use artificial snow, or to those which may choose to do so in the future.

Clause 704(b)(2)(C)(ii) is intended to promote water conservation in the Lake Tahoe basin. This clause permits the States to measure water use as the sum of the amounts of water delivered to all metered connections, if all delivery points are equipped with a water meter, and if the State law provides for adoption of water conservation plans meeting the specified criteria, the terms of which were modelled after California Water Code section 10610, et seq. Nothing in this section is intended to preclude either State from enacting new law or amending any existing law to authorize or require adoption of management plans which meet the criteria of clause (ii).

Subsection 704(c) apportions the water of the Truckee River basin. California is allocated the use of 32,000 acre-feet per year from all natural sources, subject to several conditions. California's use from surface sources is limited to 10,000 acre-feet per year, and is subordinated to the Pyramid Lake Tribe's rights recognized in Claim Nos. 1 and 2 of the Orr Ditch decree. Diversions of surface water begun after the date of enactment of this title will be subordinated to the Sierra Pacific Power Company's 40 cubic feet per second right described in Article V of the Truckee River Agreement. Additionally, use of water in California for commercial irrigated agriculture, as defined in subparagraph 704(c)(1)(H), which is initiated after the date of enactment of this title, will be subordinated to all uses in Nevada, including maintenance and preservation of the Pyramid Lake fishery. Except for these priorities, nothing in this subsection is intended to subordinate California's 10,000 acre-foot surface water allocation to any other use of water in Nevada.

Under subsection 704(c), California's use of groundwater within its overall 32,000 acre-foot allocation is made senior to all uses of groundwater in Nevada having a point of extraction within California. Any such uses in Nevada must cease to the extent the extractions cause safe yield of a groundwater basin to be exceeded. Safe yield would be determined, if necessary, by California law. As specified in subparagraph 705(a)(3)(I), procedures for implementing California's allocation of Truckee River water for use within California portion of the Truckee River basin may be included in the Operating Agreement. This may include criteria for diversion and storage of all or any portion of California's 10,000 acre-fcot surface water allocation, consistent with the priority assigned to it by this section.

Under paragraph 704(c)(2), a long-standing transbasin diversion from the Truckee River basin into the Sierra Valley, Sierra County, California, is recognized and allocated to California in addition to the overall 32,000 acre-foot per year allocation.

Paragraph 704(c)(3) provides that, all Truckee River basin water not expressly allocated for use in California is allocated for use in Nevada.

The Committee recognizes that a central purpose of this interstate apportionment of water is to secure to each State an amount of water upon which the State may rely for its own needs, including economic development and environmental protection. Subsection 704(f) provides that interstate transfers of water in the Truckee and Carson river basins are subject to restrictions which the States may enact to protect their legitimate economic and environmental interests. This subsection requires that such rules apply in an identical manner to intrastate and interstate transfers. The Committee intends that both the terms and implementation of such rules be considered in judging their permissibility under this section.

Interstate transfers in the Truckee and Carson river basins will be subject to different processes. Truckee River basin transfers will be governed by applicable State law, as limited by this subsection and paragraph 704(f)(1). With regard to the Carson River basin, the Alpine decree reserved jurisdiction in the United States District Court to review, among other things, proposed changes in point of diversion, manner of use, and place of use. Paragraph 704(f)(2) integrates the authority of the States with the jurisdiction of the Alpine court, including that Court's public interest jurisdiction, with the intention of avoiding disruption of the Court's administration of Carson River basin water rights.

Paragraph 704(f)(3) addresses those instances where the United States may seek an interstate transfer of Truckee or Carson river basin water or water rights. Generally speaking, in such cases the rule established by the United States Supreme Court in the case of *California* v. *United States,* 438 U.S. 645 (1978) will govern. In using the phrase "inconsistent with any clear statutory directive," the Committee intends that the phrase be interpreted according to the decision in that case and subsequent cases implementing that decision. Paragraph 704(f)(3) is not intended to alter Federal compliance with State water law. However, this section means that neither State is empowered to deny or impose conditions on trans-

fers proposed by the United States or when the result would be inconsistent with any clear statutory directive enacted subsequent to enactment of this title, or would be inconsistent with the United States responsibilities to the Lahontan Valley wetlands or Pyramid Lake fishery under the Endangered Species Act, as amended. This paragraph is not intended to impair or diminish the U.S. responsibilities within California under the Endangered Species Act, as amended, or this title.

Section 705, in general, authorizes and directs the Secretary of the Interior to use Federal water storage facilities in the Truckee River basin and take certain other actions to aid in the implementation of an agreement to be signed by the United States, Sierra Pacific Power Company, and the Pyramid Lake Tribe. That agreement, referred to as the "Preliminary Settlement Agreement as modified by the Ratification Agreement," will make possible significant changes in the operation of Truckee River storage facilities and exercise of Truckee River water rights to as to improve spawning conditions for cui-ui and Lahontan cutthroat trout and, at the same time, provide water to serve the Reno-Sparks area during drought periods. The Preliminary Settlement Agreement as modified by the Ratification Agreement is reprinted as Appendix 1 of this Report.

Paragraph 705(a)(1) directs the Secretary to negotiate and enter into an agreement, known as the "Operating Agreement," with the State of Nevada and State of California. The Operating Agreement will govern the operation of Federal reservoirs in the Truckee River basin in order to carry out the Preliminary Settlement Agreement as modified by the Ratification Agreement, and meet certain other requirements. If other parties to the Orr Ditch decree choose to become parties to the Operating Agreement, that agreement may include operation of privately owned reservoirs. The Committee understands that the Pyramid Lake Tribe and Sierra Pacific Power Company will have to be signatories to the Operating Agreement in order to satisfy the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

Among other things, the Operating Agreement will modify the existing method of river regulation in order to carry out the Preliminary Settlement Agreement as modified by the Ratification Agreement, and will set forth criteria and procedures for satisfaction of other water rights on the river system. The Operating Agreement should also provide for improved coordination of reservoirs to satisfy instream beneficial uses of water in the Truckee River, such as fish and wildlife habitat, recreation, and water quality. The Operating Agreement should also specify an entity to administer the agreement and its river operations provisions. The Committee notes that this section is intended to facilitate and encourage the greatest possible coordination of reservoir operations, including privately owned reservoirs, if possible, with the overall goal of moving beyond the present method of river regulation, tailored to meet the needs of the early part of this century, to a method which utilizes current technology to the fullest possible extent and serves contemporary needs.

The Committee expects that negotiation of the Operating Agreement may take some time. The Secretary is required to comply with an Endangered Species Act and the National Environmental Policy Act prior to becoming a party to the Operating Agreement. The State of California has indicated that it will be required to comply with the California Environmental Quality Act prior to executing the Operating Agreement.

Subparagraph 705(a)(2)(D) expressly provides that the Operating Agreement must be structured to permit water right holders under the Orr Ditch and Truckee River General Electric decrees to continue to exercise their rights under those decrees, except where rights have been voluntarily relinquished or in the case of rights which are transferred under State law. Paragraph 705(a)(4) requires that, before entering into effect, the Operating Agreement be submitted to the Orr Ditch and Truckee River General Electric courts. These provisions are intended to protect the rights of Newlands Project irrigators and other users of Truckee River water. They should be read in conjunction with paragraph 710(b)(13) which disclaims any intent to alter or conflict with any vested or perfected Truckee River water rights or affected the power of the Orr Ditch court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree.

Subparagraph 705(a)(2)(C) directs the Secretary to enter into one or more mitigation agreements with the other parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and with appropriate State agencies. The mitigation agreements are intended to provide the means to remedy significant adverse environmental effects, if any, which may arise from implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

Paragraph 705(a)(6) directs the Secretary to collect appropriate amounts from Sierra Pacific Power Company for use of storage at Stampede Reservoir. The Committee expects the Secretary to negotiate an agreement that reflects fully the monetary value of the storage capacity to be used by Sierra Pacific pursuant to the Preliminary Settlement Agreement as modified by the Ratification Agreement. In determining such charges, the Committee expects the Secretary to provide for inflation, and take into account such factors as avoided capacity costs, accrued construction costs (plus interest), the value of the waiver provided under paragraph 710(b)(17), and the value of rights or assets provided by Sierra Pacific Power Company to the benefit of the United States under the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement.

Subsection 705(b) authorizes the Secretary to permit storage of non-project water in Federal water storage facilities in the Truckee River basin to implement the Preliminary Settlement Agreement as Modified by the Ratification Agreement, and to fulfill the purposes of the title. Non-project water includes, but is not limited to, the 10,000 acre-feet of Truckee River basin surface water allocated to California under section 704, where such water is not included in the California water right entitlements held by the Secretary for storage in Washoe Project or Truckee River Storage Project reser-

voirs. The Secretary is directed to collect reasonable charges for such storage. Payments received for such storage will be used to pay the operation and maintenance costs of Stampede Reservoir, with excess revenues covered to a special fund established by subsection 706(f) to benefit Lahontan Valley and Pyramid Lake fish and wildlife and surplus, if any, credited to the Reclamation Fund. The Committee expects the Secretary to constrain operating and maintenance expenditures at Stampede Reservoir to only those reasonably necessary. This subsection is not intended to affect payment obligations under existing contracts for storage in Truckee River reservoirs.

Subsection 705(c) cancels repayment obligations associated with construction of two Washoe Project facilities on the Truckee River, Stampede and Prosser Creek reservoirs, and revokes the Secretary's authority to construct a third Washoe Project dam, Watasheamu, planned for the Carson River, but recognized to be economically unjustifiable. Operation of Stampede and Prosser Creek reservoirs, and payment for the use of those facilities, will be governed by the provisions of this title.

Section 706 is intended to lay the foundation for the restoration and permanent protection of Great Basin wetland ecosystems in the Lahontan Valley, including the Stillwater National Wildlife Refuge. The activities authorized by this section will contribute to other national and international efforts to protect and restore migratory waterfowl and associated habitats.

Subsection 706(a) authorizes and directs the Secretary to acquire and manage sufficient water and water rights to maintain, on a long-term average, 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands, an area defined in subsection 703(e) to include wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation.

The Committee expects the Secretary to acquire water and water rights through a variety of means, including purchase, lease, exchange, public and private donation. All purchases, however, must be from willing sellers. The Secretary's authority under this subsection extends to water rights acquisitions with or without the lands to which such rights are appurtenant. As permitted by applicable State law, this subsection would allow the Secretary to acquire water and water rights through water conservation activities within the Newlands Project. The Committee encourages the Secretary and representatives of the State of Nevada and other interests to pursue arrangements which would permit the Secretary to retain and use water conserved as a result of the Secretary's investments in measures to improve the efficiency of the Newlands Project. The Committee believes that such arrangements could serve the interests of all Newlands Project beneficiaries and assist the operator of the Newlands Project in its efforts to comply with applicable operating criteria and procedures. In light of the demands from all interest for the limited water resources of the Truckee and Carson rivers, it is vital that the Secretary and the State of Nevada cooperate in assuring that the Lahontan Valley wetlands are restored, managed, and maintained in the most

water-efficient manner for the maximum benefit of those nationally and internationally valuable resources.

The Secretary is directed to acquire and use water and water rights in a manner consistent with, among other things, efforts to recover the Pyramid Lake fishery. The Secretary is barred from purchasing water rights that cannot be transferred in substantial part to the wetlands in accordance with applicable court decrees and State law. In this regard, the Committee expects the Secretary to avoid transfer of inactive water rights and, where practicable, to acquire water rights which, when transferred to the wetlands, tend to increase the efficiency of water use and delivery within the Newlands Reclamation Project.

Over the past 2 years, the Secretary has used certain criteria to guide acquisitions of more than 1,000 acre-feet of water for the Lahontan Valley wetlands. This important achievement has taken place during a period of critical water-supply shortage. Preliminary maps identifying water rights eligible for transfer to the wetlands have been developed by the Bureau of Reclamation. The Committee notes that the acquisition, selection, transfer, and application criteria set out in subparagraphs 706(a)(1)(A)–(C) of this title are designed to reflect the existing criteria in procedure, substance, and spirit. Accordingly, the Committee believes that the Secretary's current water rights acquisition program satisfies the acquisition, selection, transfer, and application requirements of section 706(a). The Secretary's efforts to consult with affected interests, to segregate "eligible" water rights, to condition purchases and leases on the Nevada State Engineer's approval of transfer requests, and to maximize both the environmental and project benefits of the program are consistent with the goals of this subsection and title.

The Committee recognizes that water rights acquisitions and transfers to the Lahontan Valley wetlands will be of assistance to Newlands Project farmers by forestalling substantial expenditures associated with management of drainwater and groundwater quality and quantity. Nevertheless, subsection 706(a)(3) reflects the Committee's efforts to ensure that the operator of the Newlands Project suffers no undue financial burden as a result of the water acquisitions authorized by this section. The Secretary is authorized to pay reasonable operation and maintenance costs to the operator of the Newlands Project, and others, for the delivery of water acquired for the wetlands.

Section 706 anticipates that water and water rights for the Lahontan Valley wetlands will, for the most part, be acquired in Nevada. Subparagraph 706(a)(2)(C) addresses the exceptional circumstance where the Secretary chooses to purchase water within the State of California. In recognition of the interstate allocations made by subsection 704, this subparagraph directs the Secretary to consult with the Governor of California, and develop a record of decision on the basis of such consultations, to assure that the impacts of such a transfer are fully analyzed, and the requirements of applicable California law are met. This subparagraph should be interpreted and applied in connection with paragraph 704(f)(3). The Committee intends that the Secretary view acquisition of water rights in California as an option to be pursued only after exhausting reasonable alternatives in Nevada.

Subsection 706(b) expands the size of the existing Stillwater National Wildlife Refuge to approximately 77,520 acres of Federal land, and provides that the Secretary will henceforth manage the land through the United States Fish and Wildlife Service as a unit of the National Wildlife Refuge Sytem. This subsection would more than triple the size of the current Stillwater National Wildlife Refuge by incorporating Federal lands now in the Stillwater Wildlife Management Area, and is intended to permit the Secretary to improve the management of the area in order to maintain and restore natural biological diversity within the refuge, provide for the conservation and management of fish and wildlife and their habitats, fulfill the international treaty obligations of the United States with respect to fish and wildlife, and provide opportunities for scientific research, environmental education, and fish and wildlife oriented recreation. A map showing the expanded refuge area is included with the Report in Appendix 2.

Paragraph 706(b)(4) provides that expansion of the refuge shall not preclude use of those lands for Newlands Project drainage purposes, but authorizes the Secretary to take such actions as may be required to prevent and correct the adverse impacts of agricultural drainage water on the wetlands. This section does not diminish the responsibilities or liabilities of other parties with regard to improvement, treatment, or management of water draining to the Lahontan Valley wetlands. The Committee anticipates that the Secretary will take advantage of opportunities to reduce quantities of poor quality drainage water reaching the Lahontan Valley wetlands in the courts of acquiring water and water rights under this section. Nothing in this title is intended to impair the Secretary's current rights under State law to use Newland Project drainage water for the benefit of the Lahontan Valley wetlands.

Subsection 706(c) directs the Secretary of the Navy to reduce use of Newlands Project water on the Naval Air Station, Fallon, to the maximum extent practicable, while still meeting flight safety requirements. Water conserved by the Secretary of the Navy will thereafter be managed by the Secretary of the Interior for the benefit of the Pyramid Lake fishery, as required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, and the Lahontan Valley wetlands. The Committee expects the Secretary of the Navy to use best efforts to reduce water use at the base, so as to contribute to the Secretary of the Interior's efforts to restore Lahontan Valley wetlands and the Pyramid Lake fishery. The Committee expects the Secretary of the Navy to evaluate fully land management plans or measures which use, in whole or part, agricultural drainage or reclaimed wastewater supplies.

In the expectation that some irrigated farmlands associated with the Naval Air Station will be retired as a result of the water conservation measures required by this subsection, paragraph 706(c)(4) directs the Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, to fund and implement a program to demonstrate the feasibility of restoring previously irrigated Newlands Project farmland to a stable and ecologically appropriate dryland condition. This provision, when implemented, will assist the Secretary of the Navy in fulfilling the terms and spirit of an agreement reached with the State of Nevada on

February 25, 1986, which committed the Secretary of the Navy to enhance the stability and future of the Stillwater Management Area and the Carson Lake Pasture, and would be consistent with recent directives from the Secretary of Defense regarding the military's responsibilities for environmental improvement.

Subsection 706(c)(1) refers to "recently irrigated water-righted Navy lands." This phrase is meant to ensure consistency with the Secretary's efforts to establish standards for acquisition and transfer of Newlands Project water rights.

Subsection 706(d) authorizes the Secretary of the Interior to enter into an agreement with the State of Nevada through which the State is to provide not less than $9 million for water and water rights acquisitions to benefit the Lahontan Valley wetlands. This subsection represents the major component of local cost sharing associated with this legislation, and the State's contribution under the terms of the agreement with the Secretary is a prerequisite to the Secretary's authority to acquire water rights under subsection 706(a).

Subsection 706(e) authorizes the Secretary to convey to the State of Nevada Federal lands in a portion of the Lahontan Valley wetlands known as "Carson Lake and Pasture" for use by the State as a wildlife refuge and, whether the transfer takes place or not, requires that the area be managed hereafter in a manner consistent with the United States international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. If the transfer authorized by this subsection takes place, this subsection will not preclude the State of Nevada from managing the Carson Lake and Pasture for hunting or the same purposes as are provided in subsection 706(b) for the Stillwater National Wildlife Refuge.

Subsection 706(e) would create the opportunity to reduce the Secretary's costs associated with management of the Lahontan Valley wetlands, improve management of the area for migratory waterfowl and shorebirds, and recognize important efforts made over many years by the State of Nevada in the protection and management of the Carson Lake and Pasture area. If the transfer authorized by this section occurs, the Committee expects the State and the Secretary to coordinate management of the wetland areas under their respective jurisdictions. This subsection is not intended and should not be interpreted to affect the Secretary of the Navy's operations at Naval Air Station, Fallon. A map showing the Carson Lake and Pasture is included with this Report in Appendix 2.

Subsection 706(f) establishes a special fund in the Treasury to be known as the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which will be credited with revenues received from the Sierra Pacific Power Company in exchange for its use of storage space in Stampede Reservoir, other revenues generated by storage of non-project water in Federal water storage facilities in the Truckee River basin, certain surplus interest earnings resulting from the Pyramid Lake Paiute Fishery Fund, and other sources, including appropriations as may be authorized or donations. The State of Nevada's contributions under subsection 706(d) may be deposited in this fund. The fund is to be used to benefit the Lahontan Valley wetlands and Pyramid Lake fishery. The Committee expects

the Secretary to use available authorities and entities to ensure that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals shall earn interest.

Subsection 706(g) authorizes the Secretary to convey public lands in an area near Fallon, Nevada, to the State of Nevada or Churchill County, Nevada, to be managed for fish and wildlife and recreation, consistent with subsection 709(i). Management of these lands has proven to be of considerable inconvenience and unreasonable expense to the Secretary. The Committee believes that the substantial local recreational use of these lands argues in favor of local responsibility for their management. A map showing these lands, which are known as the "Indian Lakes," is included in this Report in Appendix 2.

Section 707 provides certain authorities and direction to the Secretary to assist efforts under the Endangered Species Act to recover the cui-ui and Lahontan cutthroat trout.

Subsection 707(a) requires the Secretary to revise and implement cui-ui and Lahontan cutthroat trout recovery plans. This subsection requires the Secretary to implement the recovery plans in a manner that is consistent with the interstate allocations made under section 704 of this title, and the Preliminary Settlement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary has advised the Committee that, since the Secretary will be a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Secretary will ensure that such agreements and the Operating Agreement will not impair fulfillment of the Secretary's responsibilities under the Endangered Species Act, as amended. The Committee notes that, under paragraph 705(a)(9), the Secretary is barred from becoming a party to the Operating Agreement if such action would be inconsistent with the Secretary's responsibilities under the Endangered Species Act, as amended.

The cui-ui have been listed as "endangered" under the Endangered Species Act since 1967. The Committee expects the Secretary to develop and implement the recovery plans in an expeditious manner. In particular, there should be no delays while the Operating Agreement is being negotiated and evaluated. If necessary and appropriate in the judgment of the Secretary, the recovery plans may be revised and updated when the interstate allocations under section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect.

This subsection is not intended to modify the requirements of the Endangered Species Act, as amended. The recovery plans developed and implemented pursuant to this subsection must satisfy all of the requirements of the Endangered Species Act, as amended, including section 4(f). In particular, the plans must include descriptions of the site-specific management actions necessary to achieve recovery. The reports required by section 4(f) of the Endangered Species Act should specifically describe the extent to which recovery of the cui-ui and Lahontan cutthroat trout has been achieved, the current status of the implementation of recovery plans, any need for adjustment in those plans, and the accrued and projected costs for implementation of those plans. The plans developed pursuant to sub-

section 707(a) must address and provide solutions for all impediments to the recovery of the cui-ui and Lahontan cuthroat trout.

Subsection 707(b) directs the Secretary of the Army to expand an existing study of the Truckee River to include a study of the rehabilitation of the lower Truckee River for the benefit of the Pyramid Lake fishery.

Subsection 707(c) authorizes the Secretary to acquire and use water and water rights for the benefits of the Pyramid Lake fishery. Like subsection 706(a), this subsection anticipates that water and water rights for the Lahontan Valley wetlands will, for the most part, be acquired in Nevada. Subsection 707(c)(2)(C) addresses the exceptional circumstances where the Secretary chooses to purchase water within the State of California. In recognition of the interstate allocations made by section 704, this paragraph directs the Secretary to consult with the Governor of California, and develop a record of decision on the basis of such consultations, to assure that the impacts of such a transfer are fully analyzed, and the requirements of applicable California law are met. This subparagraph should be interpreted and applied in connection with paragraph 704(f)(3). The Committee intends that the Secretary view acquisition of water rights in California as an option to be pursued only after exhausting reasonable alternatives in Nevada. The limitations on acquisition and transfer of water rights under this subsection are not intended and should not be interpreted to apply to any authority the Secretary may have to acquire and transfer water rights under the Endangered Species Act, as amended.

Subsection 707(d) requires the Secretary to use U.S. rights to store water in Stampede Reservoir and Prosser Creek Reservoir for the benefit of the Pyramid Lake fishery, subject to certain other agreements. The intent of this section is to provide that the U.S. storage rights in Stampede Reservoir will be used hereafter for the benefit of the Pyramid Lake fishery. United States storage rights in Prosser Reservoir are to be used solely for the benefit of the Pyramid Lake fishery until such time as the cui-ui and Lahontan cutthroat trout both are recovered under the terms of the Endangered Species Act, as amended.

Subsection 707(e) explains the inclusion of provisions in subsection 706(c) related to use of water at the Naval Air Station at Fallon, Nevada. This subsection explains that water saved from implementation of less water-intensive land management practices at the Naval Air Station is intended to offset any reductions in flows in the Truckee River and to Pyramid Lake that may result from the interstate allocations under section 704 or from certain waivers contained in the Preliminary Settlement Agreement as modified by the Ratification Agreement. The Committee notes, however, that the legal effectiveness of section 704, including the interstate water allocations, and of the waivers contained in the Preliminary Settlement Agreement as modified by the Ratification Agreement, are not conditioned upon the Navy achieving savings of a particular quantity of water. Although this title does establish certain conditions on the effectiveness of section 704 and the Preliminary Settlement Agrement as modified by the Ratification Agreement, nothing in subsection 707(e) is intended as such a condition.

Section 708 establishes two special funds in the Treasury for the benefit of the Pyramid Lake Tribe. Both funds are subject to preconditions intended to resolve water-related controversies between the Tribe and other users of the Truckee and Carson rivers.

Subsection 708(a) establishes the "Pyramid Lake Paiute Fisheries Fund" and the "Pyramid Lake Paiute Economic Development Fund." Subsection 708(a)(2) authorizes appropriation of $25 million to the Pyramid Lake Paiute Fisheries Fund (hereafter "Fisheries Fund"). Subsection 708(a)(3) authorizes appropriation of $50 million to the Pyramid Lake Paiute Economic Development Fund (hereafter "Development Fund").

The Fisheries Fund is structured as a permanent trust account, with the principal and a portion of annual interest earnings unavailable for withdrawal. In part, interest earnings from this fund would replace moneys which are now appropriated annually to the Secretary to be used for the benefit of the Pyramid Lake fishery. Interest from the Fisheries Fund would be available to the Pyramid Lake Tribe for the purposes of operation and maintenance of tribal fishery facilities at Pyramid Lake, and for restoration, maintenance, and management of the Pyramid Lake fishery in accordance with plans prepared by the tribe in cooperation with the U.S. Fish and Wildlife Service and approved by the Secretary. Funds could not be disbursed from the Fishery Fund until, first, the Pyramid Lake Tribe releases any and all claims of any kind against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title, and, second, the Pyramid Lake Tribe assumes complete financial responsibility for tribal fishery facilities. This provision is not intended to confer any fishery management authorities on the tribe that the tribe does not possess under current law, nor is it intended to diminish the Secretary's authority or responsibilities under the Endangered Species Act, as amended.

The Development Fund, both principal and interest, would be available for tribal economic development in accordance with a plan developed in consultation with the Secretary. Subparagraph 708(a)(3)(A) requires that the objectives of the plan shall be to develop long-term, profitmaking opportunities for the tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan must be consistent with the fishery restoration goals of section 707 of this title. The Secretary is barred from disbursing any sums from this fund until, among other things, the interstate allocations, Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement go into effect.

No portion of the principal of either fund may be distributed to members of the Pyramid Lake Tribe on a per capita basis.

Section 709 is intended to assist the Secretary and the operator of the Newlands Project in meeting contemporary demands for the project's water and facilities, while resolving certain controversies that have afflicted the project in recent decades.

Subsection 709(a) authorizes the Secretary to continue to operate the Newlands Project for its traditional irrigation purpose and a

variety of contemporary purposes, including municipal and industrial, fish and wildlife, recreation, and any purpose recognized as a beneficial use under the law of the State of Nevada. This section is intended to permit operation of the project for such additional purposes, while ensuring that State law will govern transfers of water rights needed to meet those purposes. The expansion of authorized purposes is particularly important since, unlike other Reclamation projects, the United States does not hold the water rights for Newlands Project purposes, but rather delivers water for purposes under State law.

Subsection 709(b) requires the Secretary to implement this legislation in a manner consistent with applicable court decrees and regulations, including those which limit diversions from the Truckee River in order to meet water needs within the Truckee River basin and fulfill the Secretary's trust obligation to the Pyramid Lake Tribe and Endangered Species Act responsibilities with respect to the Pyramid Lake fishery.

Subsection 709(c) directs the Secretary to study and report on the feasibility of increasing the conveyance efficiency of the Newlands Project to 75 percent within 12 years after the date of enactment of this legislation. This section does not require the Newlands Project to be operated at 75 percent efficiency, but is intended to provide the Secretary and Congress with a comprehensive, workable plan for significantly improving the efficiency of water use in the project. The Committee believes that such a plan will assist the United States, State of Nevada, local governments, and the operator of the Newlands Project in efforts to protect the viability of the irrigation project while meeting increased needs for project water for other purposes.

Subsection 709(d) authorizes the Secretary to work with the State of Nevada and others to develop a "water bank" in Lahontan Reservoir. The water bank is conceived as a voluntary administrative mechanism whereby water right holders are allowed to use available storage and conveyance capacity to store and convey water not required for immediate use. The bank would be available for any beneficial purpose, including irrigation, fish and wildlife, and municipal and industrial, and would be available to any Newlands Project water right holder, including project farmers and the United States. The water bank is intended to encourage conservation and wise use of Newlands Project water by limiting the impact of the traditional "use it or lose it" principle of Nevada water law. The water bank would, however, be required to operate in a manner consistent with State law. The Committee notes that this provision is supported strongly by users of the Newlands Project and, accordingly, urges the Secretary to pursue implementation of this subsection in an expeditious manner.

Subsection 709(e) authorizes the Secretary to study measures to benefit recreational use of Lahontan Reservoir and the Carson River below Lahontan Dam.

Subsection 709(f) authorizes the Secretary to study the use of municipal wastewater for the purpose of improving certain existing and former wetland areas, and other beneficial purposes. This study is intended to complement efforts now underway involving the Environmental Protection Agency and others to improve the

quality of Truckee River water downstream of Reno and Sparks, Nevada. The committee expects that all such studies will fully describe and evaluate the effects that alternative effluent reuse proposals and associated water right acquisitions or exchanges would have on attainment of the goals and objectives of sections 706 and 707 of this title. The Secretary should avoid the implementation of any alternative that would frustrate those goals and objectives.

Subsection 709(g) authorizes the Secretary to cancel repayment obligations owed to the Bureau of Reclamation by the Truckee-Carson Irrigation District. The debt cancellation authorized by this section would provide the Truckee-Carson Irrigation District with benefits over and above the substantial accumulated interest subsidies already provided to Newlands Project beneficiaries, an amount that has been estimated to exceed $50 million. In light of these and other benefits provided to the District, the Committee expects the Secretary to secure appropriate assurances from the District regarding the future use of collected repayment funds.

Subsection 709(h) provides that the benefits of subsections 709(d), 709(e), 709(f), 709(g) are contingent on final resolution of certain claims involving the Truckee-Carson Irrigation District and others. Paragraph 709(h)(2) provides that the debt cancellation authorized by section 709(g) is contingent on the State of Nevada providing a minimum of $4 million in funds for water conservation measures associated with resolution of the claims involving the Truckee-Carson Irrigation District. Paragraph 709(h)(3) authorizes the Secretary to expend such sums as may be required to match on a dollar-for-dollar basis the sums contributed by the State of Nevada under paragraph 709(h)(2).

Subsection 709(j) is intended to guide the Secretary's promulgation and enforcement of operating criteria and procedures for the Newlands Reclamation Project. This subsection reflects the Committee's view that uncertainty associated with the basis, terms, and enforcement of past OCAP significantly restricted the substantial public benefits which the Newlands Project and the water resources of the Truckee and Carson river basins are capable of providing.

Paragraph 709(j)(1) requires the Secretary to implement this title in a manner fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 354 F. Supp. 252 (D. D.C. 1973). Though it affirms the United States District Court's 1973 ruling, this paragraph does not require the Secretary to implement the OCAP prescribed by that ruling, either now or at any time in the future. Rather, this provision is intended and should be interpreted to require the Secretary to comply with the principles and standards established by that decision in implementing this title.

Paragraph 709(j)(2) provides a mandatory, interim resolution of litigation concerning the Secretary's final OCAP, as promulgated in April 1988 ("1988 OCAP"). Throughout the more than 400 days during which this legislation was pending before the Committee, and during the months that preceded introduction of the bill from which this title is drawn, numerous efforts were made to settle the various parties' claims related to the 1988 OCAP. No settlement could be achieved. The Committee believes that the public interest

will served best if, over the next 7 years, the Secretary's 1988 OCAP govern operation of the Newlands Project. The Committee expresses the hope that 7 years will afford all parties ample time to resolve the OCAP-related disputies that have troubled the Newlands Project and users of the Truckee River over the past two decades. The 7-year prohibition on OCAP litigation established by this paragraph is not intended to extinguish any party's legal rights or interests. This provision requires only that claims concerning such rights or interests be held in abeyance until December 31, 1997.

This paragraph reflects a difficult compromise struck by the Committee. Throughout negotiation of this title, the Secretary of the Interior sought a permanent, congressional ratification of the 1988 OCAP. As an alternative, the Secretary argued that, in exchange for other benefits under this bill, Newlands Project beneficiaries and the Pyramid Lake Tribe should be required to dismiss with prejudice all claims related to the Secretary's 1988 OCAP. The Committee was unable to agree to the Secretary's request for a permanent imposition of the 1988 OCAP because of concern that the Secretary's ability to fulfill his various obligations associated with the Newlands Project, Pyramid Lake Tribe, Fallon Tribe, and the Endangered Species Act might be impaired.

The Committee was also unable to agree to the Secretary's request that the Newlands Project beneficiaries and Pyramid Lake Tribe be required to abandon all claims related to the 1988 OCAP. While the Secretary's proposal was apparently reasonable, the Committee's unsuccessful experience in promoting an OCAP settlement and consultations with various parties produced the firm conclusion that, in all likelihood, such a precondition would become an impassible barrier to implementation of the central provisions of this title, including the interstate allocations under section 704 and improved Truckee River operations under section 705. Positions, attitudes, and expectations shaped by years of litigation had hardened to the point where the flexibility needed for compromise was lost. Indeed, the Committee was advised by the Department of Justice that reaching settlements with some parties would be virtually impossible. Rather than place this title's substantial regional and national benefits in such jeopardy, the Committee chose a middle course, one which provides temporary certainty as to the terms of the Newlands Project's OCAP, a temporary end to all OCAP litigation, flexibility to meet the Secretary's legal obligations, and a significant period of time during which the various claimants to the Truckee's water may reflect on heretofore unexplored opportunities for cooperation.

Under this paragraph, the Secretary retains the right to change the 1988 OCAP before December 31, 1997, if required to meet his obligations, including those under the Endangered Species Act, as amended. This paragraph does not mean that the Secretary has the right to do what is prohibited under other applicable law or decrees, including the Administrative Procedures Act, National Environmental Policy Act, the Orr Ditch decree or the Alpine decree. This paragraph means that the Secretary retains discretion to deviate from the 1988 OCAP if the Secretary determines that such change is required to meet his legal obligations, but, prior to January 1, 1998, cannot be compelled to do so by any other party

through any means whatsoever. If the Secretary does choose to modify the 1988 OCAP prior to December 31, 1997, the prohibition on judicial or administrative review established by this paragraph will terminate automatically.

Paragraph 709(j)(2) also validates certain actions taken by the Secretary under prior OCAP. This paragraph is not intended and should not be interpreted to affect or modify any judicial decisions made prior to enactment of this title concerning such actions by the Secretary.

Paragraph 709(j)(3) directs the Secretary to ensure compliance with all provisions of the 1988 OCAP and any applicable provisions of previously adopted OCAP. The Committee expects the Secretary to enforce both the letter and the spirit of applicable OCAP. The Committee believes that strict enforcement of the Secretary's OCAP will encourage stable, predictable, and fair operation of the Newlands Project, while eliminating what has proven to be a major cause of past litigation and discord. This paragraph provides also that the Secretary is to pursue recoupment of any water diverted from the Truckee River in excess of applicable OCAP. This provision should be read together with subsection 709(h) which offers incentives to the Truckee-Carson Irrigation District to enter into a settlement agreement with the Secretary concerning recoupment of water diverted in excess of amounts permitted under applicable OCAP.

Subsection 710(a) lists contingencies on the effectiveness of certain provisions of this title. The Committee notes that implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, not this title, will require substantial water conservation efforts in the Truckee Meadows area, including comprehensive retrofit metering of residences, inverted block-rate pricing structures, and mandatory drought-year water-use reduction.

Subsection 710(b) includes a number of savings clauses and provisions relating to the status of lands within the exterior boundaries of the Pyramid Lake Indian Reservation.

Paragraph 710(b)(2) is intended to bring long-term protection to Anaho Island, including lands that have been or may be exposed as a consequence of changes in the elevation of Pyramid Lake. This subject reflects a unique and important compromise and opportunity for cooperation among Federal, tribal, and environmental interests. This subsection expressly incorporates the Anaho Island National Wildlife Refuge into the Pyramid Lake Indian Reservation. Thiss subsection, in recognition of the consent evidenced by a resolution adopted by the Pyramid Lake Pauite Tribal Council, provides that all of Anaho Island is to be managed as an integral unit of the National Wildlife Refuge System. It is the Committee's intent that the Anaho Island National Wildlife Refuge established under this subsection shall exist in perpetuity, subject only to further act of Congress. The Committee expects the Secretary, acting through the Director of the United States Fish and Wildlife Service, to continue to manage the refuge in accordance with the requirements of the National Wildlife Refuge System Administration Act. This subsection authorizes the Secretary to enter into cooperative agreements with the Pyramid Lake Tribe concerning the man-

agement and administration of the Anaho Island National Wildlife Refuge. The Committee. while recognizing the unique circumstances concerning the establishment and management of the refuge, notes that this provision is not intended to modify the primary management responsibilities of the Director of the U.S. Fish and Wildlife Service mandated by the National Wildlife Refuge System Administration Act or create a precedent for other areas.

As used in paragraph 710(b)(16), the term "address" is intended to mean actions chosen by the Secretary to remedy significant adverse impacts on the quality and quantity of groundwater within the Newlands Project. Such actions may include, but are not limited to domestic water system feasibility studies, provision of municipal wells, use of surface water storage and conveyance facilities, construction of requisite treatment facilities and the installation of appropriate works. The Committee would note that groundwater problems related to fuel spills, trace-metal mobilization, poorly-drained soils, and nutrient pollution already exist throughout the Newlands Project area. According to a recent report by the U.S. Geological Survey, the area's groundwater "commonly exceeds the drinking water standards for arsenic, chloride, dissolved solids, fluoride, iron, manganese and sulfate." While some of these problems may well be alleviated by the water right acquisitions authorized by this title, it is clear that, in the long-run, the communities and residents of the Newlands Project area must develop alternatives to their current reliance on induced irrigation recharge as a predominant source of domestic water supply. Plainly, the area's problems result from causes far broader than the Secretary's possible actions under this title, and the Secretary is provided no authority under this title to address any problems other than those directly attributable to such actions. The Committee urges all interested parties to work together to achieve reasonable and timely solutions. If proposals are developed which require local cost-sharing, the Committee encourages the Secretary and local interests to consider whether contribution to the Secretary of irrigation water rights in excess of those required to sustain an integrated municipal and industrial water supply system could meet some portion, or all, of the local cost-sharing obligation.

Paragraph 710(b)(13) is intended to protect the Newlands Project's water rights and other vested and perfected rights under the Orr Ditch and Alpine decrees. The Committee was advised by representatives of the Truckee-Carson Irrigation District and State of Nevada that this language satisfied fully the requirements of recent legislation passed by the Nevada legislature (Nev. Rev. Stat. 704.230) concerning installation of water meters in the Truckee Meadows and protection of Newlands Project water rights.

Paragraph 710(b)(17) grants Sierra Pacific Power Company a limited waiver from Federal Power Act jurisdiction for the purpose of uprating generators at four pre-1935 run-of-river hydroelectric plants located on the Truckee River. The waiver granted by this subsection does not apply to changes or improvements that would adversely affect the environment or water regime on the Truckee River. The Committee expects that the Secretary will take fully into account the monetary value of this waiver to Sierra Pacific in developing appropriate charges for Sierra Pacific's use of Stampede

Reservoir. This provision is without financial cost to the Federal Government and should increase the sums that the Secretary can reasonably expect to obtain from Sierra Pacific for using Stampede Reservoir, thereby benefiting the fund established under subsection 706(f).

Subsection 710(c) authorizes appropriation of such sums as may be required to implement this legislation.

D. LEGISLATIVE HISTORY—TITLE VII

Title VII is a substantially revised version of S. 1554, legislation introduced by Senator Reid on August 4, 1989. The Subcommittee on Water and Power held a hearing on S. 1554 on February 6, 1990. (S. Hrg. 101-669).

TITLE VIII—VERMEJO PROJECT RELIEF, NEW MEXICO

Title VIII would amend existing law in an effort to end a dispute between the Department of the Interior and the Vermejo Conservancy District (district) over the Department's authority to transfer to the district a lake, known as "Lake 13," located within the project area and operated as a part of the Maxwell National Wildlife Refuge.

The Vermejo Project is a small irrigation project located in north-cental New Mexico. The dispute at hand centers on interpretation of a 1980 bill which authorized transfer of Vermejo Project facilities to the district "except for lands and interests in water which may be held by the Secretary for the management of the Maxwell National Wildlife Refuge." The bill authorized transfer of all financial responsibility for project operation and maintenance to the district, except with respect to "necessary expenses for fish and wildlife purposes."

The Department of the Interior has taken the view that Lake 13 falls within the transfer exception; the district disagrees and the resulting dispute has impeded execution of the facilities transfer contract.

Title VIII would transfer Lake 13 to the district, while preserving the right of the Secretary, acting through the United States Fish and Wildlife Service, to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge, in accordance with an existing contract with the district, and in a manner that does not interfere with operation of the Lake for Vermejo Project purposes.

Title VIII is similar to S. 1932, legislation introduced by Senators Domenici and Bingaman on November 20, 1989. The Subcommittee on Water and Power held a hearing on S. 1912 on July 24, 1990.

TTILE IX—TRANSFER OF CERTAIN INTERESTS TO THE ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

Title IX involves the Rio Grande Project, a large multi-purpose project which, among other things, serves very productive farmlands in New Mexico and Texas. The Elephant Butte Irrigation District (Elephant Butt) operates and maintains the New Mexico portion of the project. El Paso County Water Improvement District No. 1 operates and maintains the Texas portion of the project.

Title IX would authorize the Secretary of the Interior to return to Elephant Butte title to easements, ditches, laterals, canals, drains and rights-of-way which were provided by Elephant Butte to the United States for project purposes.

The district completed payments on its repayment contract in 1974, and assumed responsibility for its portion on the project at that time. The district's overall project operation and maintenance would be facilitated and expenses reduced by the transfers authorized under this title.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams would not be affected by this title. The Committee expects the Secretary to retain such control over project facilities as is required to ensure fulfillment of interstate and international obligations.

Title IX is similar to S. 1950, legislation introduced by Senators Bingaman and Domenici on September 7, 1989. The Subcommittee on Water and Power held a hearing on S. 1590 on July 24, 1990.

TITLE X—GRAND CANYON PROTECTION

A. PURPOSE—TITLE X

In general terms, title X directs the Secretary of the Interior to operate Glen Canyon Dam, and exercise other authorities, to address the dam's effect on downstream resources, to address the dam's effect on downstream resources, while preserving the dam's water storage, allocation, and delivery functions. Title X responds directly to reports of environmental damage and other resource management problems in Grand Canyon National Park and Glen Canyon National Recreation Area attributed to Glen Canyon Dam, a Bureau of Reclamation facility located on the Colorado River near the Arizona-Utah border, upstream of Grand Canyon National Park. Title X is intended to complement and reinforce current studies undertaken by the Department of the Interior.

B. BACKGROUND AND NEED—TITLE X

Glen Canyon Dam is the keystone of the Colorado River Storage Project (CRSP), and CRSP is the central vehicle for implementation of the congressioally approved Colorado River Compact. The Compact is, in turn, the basis for allocation of Colorado River water among the seven Colorado River Basin States.

The dam is the major power feature of the Colorado River Storage Project, supplying power for nonprofit, public utilities throughout the Southwest. Power revenues are credited toward the Colorado River Storage Project Fund, which is the principal source of funds for construction of CRSP irrigation and water supply projects. The dam impounds the Colorado River above Grand Canyon National Park and affects the quality and quantity of river water, the habitat of native and introduced species, and recreational use of the river.

Since it began filling in the 1960's, Glen Canyon Dam has been operated principally to serve water storage, allocation, and delivery purposes and, consistent with those operations, power purposes.

The controversy today centers on the question whether and how dam operations—prinicpally power operations—should be modified, or other measure undertaken, to provide additional benefit and protection to downstream resources, while avoiding interference with the dam's water storage, allocation, and distribution functions.

The Colorado River Storage Project (CRSP) was authorized by the Act of April 11, 1956 (70 Stat. 105; Public Law 84-485). CRSP is a complex system of four main storage project on the Colorado River and its tributaries upstream of Lees Ferry, Arizona, plus eleven "participating projects" constructed for irrigation and other uses in the Upper Colorado River Basin. The general purpose of CRSP is to initiate the comprehensive development of the water resources of the Colorado River Basin. The more specific purposes of CRSP, as stated in the 1956 authorization, are to regulate the flow of the Colorado River, store water for beneficial consumptive use, provide for the reclamation of arid and semiarid land, control floods, and, generate hydroelectric power, as an incident to the foregoing purposes.

Glen Canyon Dam was included in the 1956 authorization as the major water storage feature of the Colorado River Storage Project. The dam is located on the Colorado River near Lees Ferry, Arizona, some 30 miles upstream from the easternmost boundary of Grand Canyon National Park. The dam is the key structure for controlling deliveries of Colorado River water to the Lower Colorado River Basin States. Lake Powell, the reservoir created by Glen Canyon Dam, has a total storage capacity of 27 million acre-feet. After the dam was closed and Lake Power began storing water in March of 1963, it took seventeen years to completely fill the reservoir.

The primary purpose of Glen Canyon Dam as part of the larger CRSP system is to enable the States of Utah, Colorado, Wyoming, and New Mexico to utilize their apportionment of Colorado River water and meet their obligations for water delivery to the States of Arizona, California, and Nevada. Lake Powell and other CRSP reservoirs allow the Upper Basin States to take water year-round from the Upper Colorado River for consumptive uses and still store enough spring runoff in Lake Powell to guarantee the required compact deliveries to the Lower Basin States even during a long period of drought.

The operation of Glen Canyon Dam is controlled by the Bureau of Reclamation to meet project purposes, consistent with the laws, treaties, compacts, and court decisions regarding Colorado River operations, collectively known as the "Law of the River". The major operational goals for Glen Canyon Dam is water storage and delivery to the Lower Colorado River Basin.

Operation of Glen Canyon Dam has been established through a twofold procedure. First, the Secretary of the Interior annually determines volumes of water to be stored and released for international treaty and interstate compact purposes. Annual and monthly release volumes are based upon water supply considerations, water delivery requirements, and the avoidance of anticipated spills from Lake Powell ("spills" being releases in excess of powerplant capacity, which releases are also referred to as "flood re-

leases"). Annual and monthly reservoir operations are governed by, among other things, the Mexican Water Treaty, the Colorado River Compact, title VI of the Colorado River Basin Project Act of 1968 (hereafter "1968 Act") and the "Criteria for Coordinated, Long-Range Operation of Colorado River Reservoir" (hereafter "Coordinated, Long-Range Operating Criteria") promulgated pursuant thereto in 1970. These operational constraints take precedence over power operations (as is provided for by section 1 of the Colorado River Storage Project Act of 1956 (hereafter "1956 Act") and by section 602(c) of the 1968 Act, and over the vacating of reservoir space to reduce the probability of future flood releases, as provided by section 602(a)(3) of the 1968 Act. Second, within the constraints of monthly volumes of water to be released, hour-to-hour, daily, and weekly fluctuations in releases are made in accordance with hydroelectric power generation needs as determined by the Western Area Power Administration.

In the early 1980's, the Bureau of Reclamation began studies on the effects of Glen Canyon Dam on the downstream environment, including Grand Canyon National Park and Glen Canyon National Recreation Area. The studies, called the Glen Canyon Environmental Studies (GCES), revealed that construction and operation of Glen Canyon Dam had produced a mix of positive and negative consequences for the Colorado River environment.

According to the GCES, construction of Glen Canyon Dam produced the following results:

> The reservoir behind the dam, Lake Powell, provides substantial water flows during late summer and fall when, without the dam, little or no water would be in the river. As a result, the white-water rafting industry now enjoys a longer season and higher revenues.
>
> A highly regarded trout fishery has developed below the dam, resulting from reduction and stabilization of water temperatures.
>
> The incidence of major flooding on the river has been reduced, allowing development of extensive new areas of riparian vegetation. That new vegetation, in turn, supports a significantly increased population of riparian birds.
>
> All sediment from upstream of the dam is now trapped in Lake Powell, drastically reducing the sediment load. Beaches, required for camping along the river, and important habitat areas, appear to be decreasing in area and volume.
>
> Decreased river temperatures have been detrimental to many native fish species. Of eight native species, only four remain in significant numbers. One, the humpback chub, is an endangered species.

Operation of Glen Canyon Dam was shown to produce adverse consequences for the Colorado River environment, Grand Canyon National Park, and the river's recreational users (rafters and fishermen). Specifically:

> Flood releases from the dam erode beaches used by recreational rafters and campers. The river's now reduced

sediment loads are inadequate to replenish beaches, even if flood releases occurred once every 20 years. Flood releases destroy riparian vegetation and birds.

Fluctuating releases from the dam, resulting from power peaking operations, cause the river to rise and fall as much as 13 feet twice a day. The fluctuations, which are most pronounced in the area immediately below the dam, strand fish, interfere with fish reproduction, erode beaches and interfere with rafting and fishing activities.

The GCES were not designed to evaluate options for remedial measures.

Last July, in response to substantial public concern over the findings of the GCES, the Department of the Interior announced plans to examine Glen Canyon Dam operations under the National Environmental Policy Act through an environmental impact statement conducted by the Bureau of Reclamation in order to determine whether alternative operational schemes and other measures might be developed that better balance the benefits provided to water, power, and environmental interests. The Secretary expects to complete the environmental impact statement in roughly 3 years.

While preparing the Glen Canyon environmental impact statement, and fulfilling the basic requirements of this title, the Secretary will be faced with the fundamental challenge of identifying and implementing a set of remedial measures which recreate and preserve the natural processes and values of the Colorado River below Glen Canyon Dam, while operating within the constraints of the most intensively regulated river in the world.

C. SECTION-BY-SECTION—TITLE X

Section 1001 provides that title X may be known as the Grand Canyon Protection Act.

Section 1002 directs the Secretary of the Interior to operate Glen Canyon Dam and exercise other authorities under existing law to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including natural and cultural resources and visitor use. The Secretary's actions would be undertaken in accordance with the additional criteria and operating plans specified in section 1004 and would be subject to and consistent with the Secretary's responsibilities to fulfill allocations of Colorado River water, as set forth in the various compacts, treaties, laws, and decrees which comprise the "Law of the River." The final sentence of this section makes clear the Committee's intention that this title in no way affect the Secretary's existing authorities and responsibilities with respect to Grand Canyon National Park and Glen Canyon National Recreation Area, nor in any manner affect statutory provisions governing management of these units of the National Park System, including the provisions of the Grand Canyon National Park Enlargement Act, Public Law 93-620. The intent of the second sentence of this section is not merely to provide a savings clause, but to establish that the Secretary's responsibilities for water storage, allocation, and delivery under the Law of

the River are primary and control the Secretary's actions under this title.

The primary purpose of this title is to effect changes in the operation of Glen Canyon Dam which have been shown to cause damage to downstream resources, principally the dam's power operations. The Committee recognizes, however, that other reasonable remedial measures may be available to the Secretary. The phrase "exercise other authorities under existing law" means that the Secretary should consider and may implement non-operational measures to address downstream effects of Glen Canyon Dam if such other remedial measures meet this title's goal of protecting, mitigating damage to, and improving the resources downstream of the dam.

Throughout this title and report, reference is made to changes in operation of Glen Canyon Dam. The Committee stresses that the primary focus of such changes will be with respect to the power operations of Glen Canyon Dam. This title is not intended to preclude changes in other operations of the dam, but the Committee wishes to emphasize that the water storage, allocation, and delivery requirements of the Law of the River place substantial limits on the Secretary's ability to change other elements of Glen Canyon Dam's operations.

Section 1003 addresses operation of Glen Canyon Dam between the time of enactment of this title and completion of the Secretary's Glen Canyon Dam Environmental Impact Statement ("EIS"). There is clear evidence that the adverse effects of current operations of Glen Canyon Dam are significant and can be at least partially remedied by development and implementation of interim operating procedures pending the completion of the EIS, the Glen Canyon Environmental Studies, and the adoption of new long-term operating procedures for Glen Canyon Dam. Section 1003 directs the Secretary to develop an interim power operating plan and implement it as soon as the current research flow program is completed but not later than September 1, 1991.

The phrase "minimize to the extent reasonably possible" appears in sections 1003(b)(2), 1003(b)(3), 1003(b)(5), and 1003(b)(6). This wording was selected to provide the Secretary with clear direction to "minimize" the adverse impacts of dam operations, within a framework of "reasonableness". The Committee does not expect, for example, that the Secretary's interpretation of this phrase would require him to completely eliminate peaking power generation at Glen Canyon Dam while interim flows are in place, although this language does not affect the Secretary's discretion to do so. The Secretary should view this directive as the strongest possible message from the Committee that interim operating procedures for Glen Canyon Dam must provide substantially greater protection to downstream resources than is now the case.

Section 1004 directs the Secretary to complete the Glen Canyon Dam EIS within the 3 years, and directs the Comptroller General of the United States to audit the costs and benefits of various alternative management policies and operational procedures identified in the EIS. The Committee urges the Secretary to assign the highest level of importance to the completion of the Glen Canyon Dam EIS. The Committee notes that nothing in this title is intended to

limit in any manner the range of alternatives which may be developed under the EIS process, nor to place a priority on any particular resource. The Committee recognizes the concern which certain interests have in future management decisions, but wishes to emphasize that the objective of this legislation is to protect, mitigate adverse impacts to, and enhance the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, not to insulate particular users from the Secretary's range of discretion.

Subsection 1004(c) directs the Secretary to adopt critera and prepare annual plans, separate from and in addition to those described in section 602(b) of the Colorado River Basin Project Act of 1968, that will, together with the exercise of authorities under existing law, ensure that Glen Canyon Dam is operated to protect downstream resources. This subsection is linked to and should be read in conjunction with section 1002 and subsection 1003(b)(1). These provisions require that such additional criteria not interfere with reservoir operations for water storage, allocation, and delivery purposes. In other words, minimum flows should not be set so low, and reservoir space should not be vacated in such amounts or at such times that the monthly and annual volumes of water required to be released for international treaty and interstate compact purposes as specified in title VI of the 1968 Act are impaired or adversely affected.

The Committee does not intend that this section interfere with the Secretary's preparation of annual operating plans under section 602(b) of the 1968 Act, which govern the operation of Glen Canyon Dam for the purpose of meeting water storage, allocation, and delivery requirements under the Law of the River. The Secretary's responsibilities in that regard are unaffected by this title, execpt as specified in the last sentence of section 1004(c), which requires the Secretary to consult with the Governors of the seven Colorado River Basin States and with the general public, including representatives of academic and scientific communities, environmental organizations, the recreational industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam. Then, subject to and consistent with that annual operating plan and his responsibilities thereunder, the Secretary shall prepare an additional plan of operations for Glen Canyon Dam pursuant to this title. The Committee wishes to emphasize that this section is not intended to affect any discretion or responsibilities the Secretary may have to consider downstream environmental impacts in connection with development of annual operating plans under section 602(b) of the 1968 Act. The public consultation required by this section is intended to assist the Secretary in exercising such discretion and fulfiling such responsibilities.

The Committee recognizes that annual operating plans promulgated under section 602(b) of the 1968 Act may need to be adjusted as actual flows and runoff forecasts change throughout the year. This may result in adjustments to the additional operating plan promulgated pursuant to this title. The Committee expects the Secretary to provide for appropriate consultation prior to making such adjustments, to the extent practicable.

Subsection 1004(d) requires the Secretary to submit to Congress the EIS, and a report describing the additional operating criteria and other remedial measures taken to protect downstream resources.

Section 1005 of this title provides for a long-term monitoring and research program to determine the effects of Glen Canyon Dam operations and other measures taken by the Secretary pursuant to this title on the downstream resources of Grand Canyon National Park and Glen Canyon National Recreation Area. Under this long-term program, the Secretary is to develop necessary information to ensure that the protection standard set in section 1002 is met. The Committee intends that the Secretary shall, consistent with and subject to other legal obligations, including those related to storage, allocation, and delivery of Colorado River water, respond to information developed under the long-term monitoring program by adapting the operation of Glen Canyon Dam, and other measures taken under this title, as needed over time to protect the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established.

Section 1006 is a savings clause which expresses the Committee's intention that noting in this title is intended to affect in any way the allocations of water secured to the Colorado River Basin States by the Law of the River. The Committee emphasizes the importance of this fundamental principle, which applies to and is meant to control the interpretation and application of every provision of this title. Section 1006 also assures that the provisions of this title do not affect any provision of Federal environmental law, including, but not limited to the Endangered Species Act, as amended, and National Environmental Policy Act.

Section 1007 recognizes that the costs of the Glen Canyon EIS, including the purchase of replacement energy necessitated by research flows, and the costs of the long-term monitoring program authorized under section 1005 of this title may be substantial and the benefits therefrom shared by the general public. Section 1007 provides that the Secretary shall consider the costs of such activities to be non-reimbursable. The Secretary is, however, authorized to use power revenues to pay such costs, but must first credit those revenues against CRSP power customers' repayment obligations. This section does not provide that increased power costs, if any, which may follow implementation of the criteria promulgated under section 1004, will be considered non-reimbursable, nor does this section apply to costs associated with the Glen Canyon Environmental Studies.

Section 1008 authorizes appropriation of such sums as may be necessary to carry out the provisions of this title.

D. LEGISLATIVE HISTORY—TITLE X

Title X is similar to S. 2807, legislation introduced by Senator McCain on June 28, 1990. The Subcommittee on Water and Power held a hearing on S. 2807 on July 24, 1990.

TITLE XI—IRRIGATION DRAINAGE DEMONSTRATION PROGRAM AND LAKE ANDES-WAGNER/MARTY III PROJECTS, SOUTH DAKOTA

A. PURPOSE—TITLE XI

This title would authorize a field demonstration program to study selenium contamination in agricultural drainage flows, and would grant conditional authorization for construction of the Lake Andes-Wagner/Marty II irrigation projects in South Dakota.

B. BACKGROUND AND NEED—TITLE XI

1. Selenium control demonstration project

The Subcommittee on Water and Power held a hearing September 14, 1989, on S. 202, a bill to authorize construction of the Lake Andes-Wagner/Marty II irrigation projects (S. Rept. 101-328). At the time of the hearing, the Bureau of Reclamation testified that the agency was resampling Lake Andes-Wagner/Marty II project—area soils for selenium contamination.[5] Results available at the time showed high levels of contamination in the Marty II area.

The Bureau testified against construction of the Marty II Unit because of concern over potential selenium contamination in drainage from the project. The Administration's witness, in response to a question from the Subcommitte, states that the Administration would oppose construction of the Lake Andes-Wagner Project if testing revealed selenium in that project's soils, as well. In fact, analyses completed after the hearing showed high levels of selenium throughout the Lake Andes-Wagner project area.[6]

In the wake of the new analyses showing selenium contamination througout the Lake Andes-Wagner/Marty II project areas, the project sponsors entered into discussions with the Bureau of Reclamation, U.S. Geological Survey, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Environmental Protection Agency, and the State of South Dakota to determine whether measures could be developed to limit selenium contamination in drainage flows to acceptable levels if the irrigation project were to be constructed. Opinions vary widely among experts as to how much drainage water would be produced by the irrigation project, and how much selenium would be transported in the drainage flows.

The Federal, State, Tribal, and local entities have designed a 10-year, approximately $30 million field demonstration program intended to:

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[5] The Lake Andes-Wagner area soils had been sampled for selenium and other potentially toxic trace elements during preparation of initial environmental documentation in the early 1980's. Apparently, the sampling method used at the time masked, rather than revealed, the presence of selenium. Sampling technology improved significantly after discovery of severe selenium contamination problems at Kesterson National Wildlife Refuge in California.

[6] Selenium, a naturally occurring element in many soils, has been found to be toxic to living organisms when ingested at even very low levels. The State of South Dakota and the EPA have set a 10 ppb limit for selenium in drinking water; this standard may be lowered in the near future. Recent studies indicate that freshwater aquatic organisms are harmed by chronic exposure to selenium levels as low as 5 ppb. Lake Andes-Wagner area soils contained selenium at levels that ranged from 100 ppb to 4200 ppb. Groundwater from the area contained selenium at levels that ranged from 1.1 ppb to 6200 ppb.

Refine projected subsurface drainage estimates and return flow quantities;

Provide reliable estimates of drainage return flow quality;

Develop irrigation best management practices to minimize return flow water quality problems;

Evaluate various alternatives for the management of return flows, and

Evaluate the project potential for wetland and wildlife development and enhancement using demonstration project water.

2. Lake Andes-Wagner/Marty II irrigation projects

A. Lake Andes/Wagner unit

The Lake Andes-Wagner Unit, as presently defined, would be developed as a part of the Pick-Sloan Missouri Basin Program. The Unit would be located in Charles Mix County, which is in the south-central portion of South Dakota, and is bordered on the west side by Lake Francis Case on the Missouri River. The purpose of the project is to help stabilize an existing dry-farm agricultural economy that is subject to periodic distress from drought. Irrigation would also permit area farmers to shift some production away from low-value commodity crops (corn, other grains) to higher value crops such as potatoes and canola. The project planning report was prepared by the Bureau of Reclamation pursuant to 1972 Congressional direction, Public Law 92–577.

The project would irrigate 45,000 acres of dry-farmed land with sprinkler systems. That total includes 39,840 acres currently being dry land farmed and 5,160 new acres not currently farmed; 1,700 acres belong to the Yankton Sioux Tribe, and for those lands this title would provide on-farm pumps, sprinklers, other facilities, and power required for irrigation.

The project's water supply would be pumped (230 foot lift) from the North Bay arm of Lake Francis Case into the distribution system for delivery to project lands. In addition, water would be supplied to the Lake Andes National Wildlife Refuge and the Red Lake State Game Production Area as mitigation for adverse environmental impacts of the project. The annual diversion from the Missouri River would be 94,000 acre-feet, approximately 0.5 percent of the Missouri's annual flow at Fort Randall Dam.

Principal project features include the North Bay Pumping Plant, six large relift pumping plants, ten smaller relift pumping plants, 36 miles of main canal, 133 miles of concrete laterals, and 35 miles of buried pipeline. Drainage facilities may include up to 1,058 miles of closed drains and 6.5 miles of open drains. The Bureau of Reclamation anticipates that drains would be installed as needed, beginning about five years after project operation commences.

The Bureau's original planning report estimated $133 per-acre per-year repayment ability, a figure sufficient to repay all reimbursable costs within 34 years. This estimate indicated that the irrigators would need no repayment assistance from Pick-Sloan hydropower revenues. The Bureau's 1989 estimate placed repayment

capacity at $137 per-acre per-year ($106 construction plus $31 O&M).

In 1989, the Bureau of Reclamation carried out two evaluations of the project's cost/benefit ratio. The first analysis, conducted pursuant to the Principles and Guidelines issued in 1983 by the Water Resources Council results in a negative benefit/cost ratio of 0.61. Using an alternative analysis that estimates considerably higher crop values, the Bureau identified a positive benefit/cost ratio of 1.04. These figures are both slightly less favorable than similar calculations done in the original planning report.

B. Marty II unit

The Marty II Unit is a 3,000-acre irrigation project designed to serve the Yankton Sioux Reservation. Water would be pumped fom the Missouri River to project area lands. Repayment of construction costs would be deferred under the Leavitt Act.

C. SECTION-BY-SECTION—TITLE XI

Section 1101 would authorize the Secretary of the Interior to undertake the selenium drainage demonstration program in accordance with a plan submitted to the Committee.

Section 1102 directs the Secretary to prepare environmental and other reports with regard to the Lake Andes-Wagner and Marty II Units based on the results of the irrigation drainage demonstration program. This section is not intended to affect the Secretary's discretion to use benefit-cost methodologies previously applied to these projects, and the Committee expects the Secretary to use a benefit-cost methodology consistent with the methodology employed in the planning reports upon which the authorizations contained in this title are based. This section establishes an absolute prerequisite to the Secretary's authority to construct the Lake Andes-Wagner and Marty II units. The Secretary has no authority to construct the Lake Andes-Wagner or Marty II units unless, based on the results of the irrigation drainage demonstration program and analysis under applicable environmental laws, both the Secretary and the Administrator of the Environmental Protection Agency provide express and specific findings to Congress that the unit to which the finding applies can be constructed, operated, and maintained so as to comply with all applicable water quality standards. The Committee intends that the Secretary and the Administrator of the Environmental Protection Agency apply extreme care in reaching such findings, in recognition of the potential public health, environmental, fish and wildlife, and water quality risks associated with selenium and other trace elements.

Section 1103 authorizes construction of the Lake Andes-Wagner Unit and the Marty II Unit, subject to the requirements of section 1102.

Section 1104 places conditions on the Lake Andes-Wagner and Marty II units and, in general, describes the physical features of such units and repayment requirements. The Bureau of Reclamation estimates that 60–75 percent of the project acreage will produce corn, which presently is in surplus supply and for which producers may be eligible for benefits under Department of Agri-

culture commodity crop programs. The Bureau estimates that a large percentage of the corn grown on project lands will be used by project farmers as cattle feed. Subsection 1104(e) addresses the double-subsidy issue by limiting crop subsidy payments to dry-land yield levels, that is payments received by project irrigators as a result of Department of Agriculture programs would not exceed the amount of payments they would otherwise receive in the absence of the irrigation project.

Section 1105 provides that the Secretary shall give preference to employment of members of the Yankton Sioux Tribe in implementing sections 1101, 1103, and 1104 of this title.

Section 1106 provides that Federal reclamation law shall apply to this title, except for section 1110.

Section 1107 authorizes a cost-sharing and administrative arrangment with the State of South Dakota and project sponsors associated with the Lake Andes-Wagner Unit. Under this section, the State of South Dakota and the irrigation district would establish a sinking fund from which monies would be used to design, administer and construct the project's drainage system and build a small impoundment (the "ring dike") designed to improve wintertime water quality in a project-area strea. The State and district would deposit $6,974,000 into a non-Federal fund and retained in that fund (at an estimated 7 percent interest rate) until needed for construction of drainage system and ring dike. The district will pay into the sinking fund an annual assessment of not less than $1 per acre levied on each of the 45,000 irrigable acres in the Lake Andes-Wagner Unit. The maximum non-federal contribution would be $46 million. Costs incurred above that maximum would be borne by the Federal Government, but would be reimbursable. The local share would be approximately 25 percent of the 1989 estimated total cost.

Section 1108 authorizes appropriation of $175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit; $1,350,000 (October 1989 price levels) for certain irrigation equipment on Indian-owned land within the Lake Andes-Wagner Unit; $24,000,000 (January 1989 price levels) for construction of the Marty II Unit; such sums as may be necessary to carry out the irrigation drainage demonstration program and operations and maintenance costs. By providing for appropriation of operation and maintenance costs, this section is not intended to make the Secretary responsible for operation and maintenance costs except as provided by applicable Federal reclamation law, this title, and agreements between the Secretary and project beneficiaries.

Section 1109 is a savings clause concerning the water rights of the Yankton Sioux Tribe.

Section 1110 directs the Secretary to contribute a percentage of funds appropriated under section 1108 to a South Dakota Biological Diversity Trust.

D. LEGISLATIVE HISTORY—TITLE XI

Title XI is similar to S. 2710, legislation introduced by Senators Daschle and Pressler on June 6, 1990. The Subcommittee on Water and Power held a hearing on S. 2710 on June 19, 1990.

TITLE XII—FORT HALL INDIAN WATER RIGHTS SETTLEMENT

A. PURPOSE—TITLE XII

Title XII would ratify and contribute to the implementation of a settlement agreement reached earlier this year by the State of Idaho, Shoshone-Bannock Tribes, United States, and other parties, which concerns the Tribes' rights to water in the Snake River basin of Idaho. Bureau of Reclamation facilities would be used to implement the agreement.

In the Committee's view, this is a model Indian water rights settlement. It is relatively inexpensive to the Federal taxpayer, does not require construction of new storage facilities, offers substantial tangible benefits to the Tribes, provides means whereby non-Indian water users are able to avoid or mitigate for adverse effects of the agreement on their water supplies, and forestalls expensive and polarizing litigation.

B. BACKGROUND AND NEED—TITLE XII

1. Fort Hall Reservation

The Fort Hall Indian Reservation is located in southeastern Idaho, near the city of Pocatello. The reservation was created by executive order in 1867 for certain bands of the Shoshone and the Bannock tribes (hereafter "Tribes"). Originally encompassing 1.2 million acres, the reservation was diminished to 543,000 acres, of which 96 percent are Indian owned.

2. Snake River adjudication and negotiations

In 1985, the Idaho legislature directed the state Department of Water Resources to seek in state court a general adjudication of the Snake River basin in Idaho, including claims to Federal water rights. Court proceedings began in 1987. Shortly after the legislature's action, in 1985, the Tribes, State of Idaho, United States, and non-Indian irrigation interests entered into negotiations concerning the Tribes' water rights within the Snake River basin. Earlier this year, the parties reached the settlement agreement (hereafter "Agreement") which title XII is intended to help implement. The agreement is a substitute for the water right claims of the United States which were to have been filed in June of this year.

3. Summary of Settlement Agreement

The Agreement provides for substantial benefits to the Tribes and the United States.

The Tribes and the United States on the Tribe's behalf will be decreed a firm water supply from surface and groundwater totaling 581,031 acre-feet per year (AFY), which is considered sufficient to meet all of their present and reasonably foreseeable future needs for irrigation, domestic, commercial, municipal, industrial, hydropower, fishery, and other needs on and near the reservation. (Articles 6 and 7). In drought years, the Tribes will feel little or no adverse impacts.

The Tribes will have the option to market annually the water accruing to approximately 130,000 AFY of storage space in Palisades

and American Falls reservoirs (features of the Bureau of Reclamation's Palisades and Minidoka projects) in accordance with tribal water bank to be run by the Tribes. (Article 7.3). This feature will provide income to the Tribes, increasing their self-sufficiency. It should encourage the Tribes to develop greater sophistication in financial matters and support stronger tribal government. Tribal water marketing offers the Tribes and their non-Indian neighbors opportunities to work together to resolve problems caused by periodic water shortages. And, finally, it will allow Tribal water to be used downstream for the benefit of migrating salmon and steelhead trout, resources of great cultural, dietary, commercial, and recreational importance to the Tribes and non-Indians.

The agreement encourages the Tribes to take a more active role in developing a tribal water code and other governmental structures to administer the Tribes' water resources (Articles 8.2 and 13.2).

For several reasons, the Agreement should reduce existing tension between the Tribes and their non-Indian neighbors. The Agreement would provide certainty as to tribal water rights, encourage resolution of conflicts through an inter-governmental board (Article 9), allow non-Indians to purchase water rights during times of shortage, and allow non-Indians to mitigate the impact of the Agreement by contracting for 99,480 AFY of presently uncontracted storage space in Bureau of Reclamation storage facilities.

The Agreement does not require construction of any new water storage facilities. Unlike some recent Indian water settlements involving Federal contributions of hundreds of millions of dollars for construction of water projects of questionable economic justification and substantial environmental costs, the parties to this agreement developed creative exchanges of water supplies which more efficiently use available water resources with no added financial or environmental costs.

The Agreement offers certain environmental benefits. In particular, the Agreement provides for the United States to continue purchasing lands and grazing rights in the Grays Lake area. These purchases will increase the water storage capacity of the Fort Hall Irrigation Project and benefit a National Wildlife Refuge which provides habitat for whooping cranes and other migratory birds. (Article 13.1). The Agreement provides for full compliance with all environmental laws. (Article 11.5.14). The Committee expects that the costs of environmental compliance will be borne by the United States. Finally, by recognizing the Tribes' rights to rent water off the reservation the Agreement may help enhance Snake River flows for the benefit of salmon and steelhead.

4. Cost-sharing

The Federal contribution to implementation of the Agreement will total $22 million over several years, plus some revenues lost by forgiving repayment of construction costs associated with unallocated storage space in two Bureau of Reclamation reservoirs, Ririe and Palisades. The State of Idaho will provide $250,000 of in-kind services to assist the Tribes in implementing the Agreement. The State of Idaho has also agreed to pay some of the filing fees associ-

ated with United States claims in the Snake River adjudication (estimated at $250,000). Responsibility for payment of the fees is the subject of collateral litigation between the United States and the state. Based on an estimate of the value of water now used by non-Indian irrigators, but which, under the Agreement would be provided to the Tribes, the Administration has calculated a local cost contribution of approximately $23–$25 million.

C. SECTION-BY-SECTION—TITLE XII

Section 1201 is a short title.

Section 1202 lists 15 definitions for the purpose of the bill.

Section 1203 declares as a finding of Congress that the purpose of the bill is to "achieve a fair, equitable and final settlement of all claims of the Shoshone-Bannock Tribes, its members and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members and its allottees to water rights in the Upper Snake River Basin."

Section 1204 approves the Agreement and directs the Secretary to implement it on behalf of the United States.

Section 1205 directs the Secretary to enter into a contract to provide storage space in Palisades and Ririe Reservoirs for non-Indian irrigators and deems all repayment obligations associated with those facilities to have been fulfilled. This section provides that the non-Indian irrigators will be eligible for all Reclamation law exemptions that normally apply in cases where reclamation project beneficiaries themselves repay project costs.

Section 1206 concerns use, transfer, and lease of the Tribes' water rights pursuant to the terms of the Agreement, and provides Congressional approval for those uses. Subsection (a) authorizes transfers and leasing of Federally reserved water rights within the Tribes' reservation. Subsection (b) authorizes rental of water accruing to Federal storage space held in trust for the Tribes, subject to certain limitations on place of use. Subsection (c) assures the Tribes the right to use some of their water for instream flow purposes. Subsection (f) protects income earned by the Tribes through water leasing and rentals from Federal or State taxation. Subsection (g) protects all of the Tribes' water rights from State law concerning forfeiture, abandonment, relinquishment, or other loss. Subsection (h) provides that, except as provided in this section, no tribal water rights described in the Agreement, may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

Section 1207 authorizes appropriations to the Bureau of Indian Affairs for a variety of purposes associated with the legislation. Subsection (a) authorizes appropriation of $10 million for a Tribal Development Fund.

Subsection 1207(b) authorizes appropriation of an additional $7 million for use by the Tribes in developing a reservation water management system.

Subsection 1207(c) authorizes appropriation of an additional $5 million for acquiring lands and grazing rights adjacent to Grays Lake.

Subsection 1207(d) bars any per capita distribution of appropriated funds.

Section 1208 provides for certain waivers of claims to water by the Tribes and tribal members against the United States and "non-Federal persons" in consideration for the water rights and other benefits secured to the Tribes through the Agreement. Subsection 1208(b) provides that, in the event funds are not paid to the Tribes in the manner prescribed by section 1207, the Tribes are authorized to bring an action in the United States Court of Claims. This provision is intended to permit the Tribes to bring claims with respect to each year, if any, in which the United States fails to make payments to the Tribe under section 1207.

Section 1209 would reduce the water rights secured to the Tribes through the Agreement by the amount of any water rights awarded to tribal members or allottees for reservation land through the Snake River adjudication.

Section 1210 describes the conditions on which authorities in the bill would become effective.

Section 1211 lists several disclaimers and savings clauses.

Section 1212 protects the Tribes' water rights against involuntary and uncompensated taking.

D. LEGISLATIVE HISTORY—TITLE XII

Title XII is similar to S. 2870, legislation introduced by Senators McClure and Symms on July 18, 1990. The Subcommittee on Water and Power and the Select Committee on Indian Affairs held a joint hearing on S. 2870 on September 13, 1990.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 3, 1990.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2567, the Reclamation Projects Authorization and Adjustment Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2567.

2. Bill title: The Reclamation Projects Authorization and Adjustment Act of 1989.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 19, 1990.

4. Bill purpose: H.R. 2567 would authorize the Bureau of Reclamation (BOR) to study, design, construct, and modify a variety of

water and power projects, to modify certain water repayment agreements, and to transfer the operation of certain facilities to nonfederal interests. The bill also contains provisions that would resolve certain Indian water rights claims.

5. Estimated cost to the Federal Government:

	1991	1992	1993	1994	1995
Estimated authorization level	35	28	71	4	4
Estimated outlays	30	29	73	6	4

CBO estimates that BOR would spend approximately $250 million after 1995 to complete construction of projects authorized in this bill (primarily Title XI).

The above table does not include costs that CBO estimates would be incurred over the next ten years or more to purchase water rights and land and to mitigate any resulting damage to water quality and wildlife habitat as required in Title VII. While these costs could be signficant—as much as $50 million to $100 million over the next decade or more—we have no basis for predicting how much water ultimately will be acquired, its value, or the cost of the resulting mitigation activities. Any additional spending would come from appropriated amounts.

The table also does not include estimates of the impact of provisions in Title X requiring interim flow constraints at Glen Canyon Dam because CBO cannot predict what type of interim flow release constraints would be implemented. We expect that these constraints would lead to increased operating costs to the Western Area Power Administration (WAPA), beginning in fiscal year 1991. While increased revenues would probably lag behind any additional costs through higher electricity rates.

The costs of the bill fall within budget functions 300 and 450.

Basis of estimate: For the purposes of preparing this estimate, CBO assumed that H.R. 2567 would be enacted early in fiscal year 1991 and that appropriations would be provided as estimated beginning in that year. Costs for those titles in which authorizations are not specified were estimated based on information from BOR and the Fish and Wildlife Service (FWS). Outlays were estimated based on information from these agencies and on historical outlay patterns for similar programs.

Title I of H.R. 2567 wold replace existing authorization language for the Buffalo Bill Dam and Reservoir project that provides a total project authorization of $106.7 million (at October 1982 price levels) with language that authorizes federal contributions to the project totaling $80 million (at October 1988 price levels). The effect of this change is to increase the authorization ceiling for the Buffalo Bill Dam and Reservoir by about $12 million. This title also would authorize the construction of additional recreation facilities and a 4.5 megawatt generating unit. We estimate that the additional $12 million would be spent over the next three fiscal years.

The $1 million federal share of the costs of additional recreational facilities authorized by the bill is included in the revised authorization ceiling. No federal funds are expected to be needed to construct the additional 4.5 megawatt generating unit.

Title II would authorize the construction of a wastewater treatment plant and the installation of a concrete liner to address water quality problems at the Leadville Mine Drainage Tunnel in Colorado. The bill would authorize the appropriation of $10.7 million plus adjustments for inflation for these purposes, plus whatever sums are necessary for operation and maintenance of the facilities.

CBO estimates that contruction of the treatment plant would cost about $12 million over the next three years. Additional construction activities costing $3 million could be necessary after the first phase of construction is complete but t ese costs are unlikely to occur within the next five years. Operation and maintenance costs are expected to total $500,000 annually beginning after construction is complete in 1944.

Title III would authorize BOR to construct wells to control water salinity problems in Lake Meredith, Texas. Federal constributions to the project would be limited to 33 percent of the total project cost and the bill would authorize $3 million to cover the federal share. The bill also would direct the Department of the Interior to conduct an inventory of all wetlands on federal lands or interests in land owned or withdrawn for use by BOR. By February 1, 1991, BOR would be required to report to the Congress on how the inventory would be conducted and funded. The bill would require the results of the inventory to be reported to the Congress by December 31, 1992. We estimate that the $3 million authorized in Title III would be spent over three years.

Information from BOR indicates that a wetlands inventory is planned under current law. We estimate that the effort will cost about $7 million. While the inventory would probably be completed sooner under title III than under current law, there would be no significant difference in cost over the 1991–1995 period.

Title IV would authorize BOR to reallocate water in the Cedar Bluff reservoir from irrigation to other project purposes and would allow the State of Kansas to purchase the right to use and control water in the reservoir for specified purposes. This title also would relieve the Cedar Bluff irrigation district of its obligation to repay certain costs in exchange for a payment of $365,424 to the U.S. Government from the State of Kansas. Finally Title IV would authorize BOR to transfer a fish hatchery and other irrigation facilities to the State of Kansas.

As originally designed, the Cedar Bluff reservoir was constructed to provide irrigation, flood control, municipal water supply and fish, wildlife, and recreation benefits. Because of insufficient supplies of water to the reservoir over the past 11 years, however, no water has been provided for irrigation purposes and the irrigation district (which is no longer operation) has been unable to repay $621,078 in obligations to the U.S. Government. The repayment obligation—which would have required the district to repay its debt in equal annual installments through the years 2015—has been deferred each year since 1978. BOR expects to continue deferring this obligation indefinitely.

Title IV would forgive the water district's repayment obligation in exchange for payments from the State of Kansas totaling $365,424, plus an agreement from the state to pay a portion of the reservoir's operation, maintenance, and replacement costs totaling approximately $15,000 annually. Because the federal government is unlikely to collect repayments on the original obligation, these payments by the state would in additional receipts to the federal government.

We do not expect other provisions of this title to affect the federal budget significantly.

Title VII, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, would authorize the allocation of waters in the Carson River, Lake Tahoe, and the Truckee River basins between Neveda and California. The title also would resolve certain controversies involving the use of water by the Newlands reclamation project, the Pyramid Lake Paiute Indian Tribe, and for various fish, wildlife and wetlands purposes. The Department of the Interior (DOI) would be authorized to buy land and water rights, to provide water storage space in federal reservoirs to nonfederal entities, and to cancel specified water repayment contracts.

DOI and the Department of Defense also would be required to carry out various studies and activities to improve water quality and use in specified areas and to restore fish and wildlife habitat. This title would appropriate $75 million, plus interest, to establish a fisheries development fund ($25 million) and an economic development funds ($50 million) for the Pyramid Lake Paiute Tribe.

Based on information provided by BOR and FWS, CBO estimates that, in total enactment of Title VII would increase federal outlays by about $68 million over the 1991-1995 period, assuming appropriation of the necessary funds. Outlays from the fisheries development funds would total about $1 million annually beginning in 1994. (The bill specifies that the $25 million authorized for the fund would constitute principal and would not be available for expenditure; estimated outlays from the fund are from interest earned on its principal.) We expect that the $50 million authorized for the economic development fund would be provided to the Tribe in 1993. We estimate that additional costs totaling about $16 million over the 1991-1995 period would be incurred in carrying out the studies and water conservation activities authorized in the bill. Also, cancellation of repayment contracts would result in a loss of receipts to the federal government totaling about $2 million over a twenty-year period.

Additional costs over the next ten years or more will be incurred to purchase water rights and land and to mitigate any resulting damage to water quality and wildlife habitat. While these costs could be significant—as much as $50 million to $100 million over the next decade or more—we have no basis for predicting how much water ultimately will be acquired, its value, or the cost of the resulting mitigation activities.

Title X would amend the Colorado River Storage Project Act to require the Bureau of Reclamation (BOR) to establish and implement, within 90 days of the bill's passage, flow release constraints at Glen Canyon Dam. These procedures would be implemented on an interim basis, pending completion of the environmental impact

statement (EIS) assessing the effect of current operations and alternatives on the Grand Canyon. (Under current law, the EIS is scheduled for completion by 1993.) The bill also would require the Comptroller General to review the final EIS and would require BOR to report to the Congress on long-term operating procedures developed as a result of the final EIS.

We expect that development of the interim operating procedures would cost BOR about $200,000 in 1991. Auditing and reporting requirements after the EIS is completed are estimated to total about $300,000 and would be incurred in 1993.

While CBO cannot predict what type of interim flow release constraints would be implemented at Glen Canyon Dam, we expect these constraints would lead to increased operating costs to the Western Area Power Administration (WAPA) beginning in fiscal year 1991. These costs would result from WAPA's need to purchase more power to meet its contractual obligations, replacing the power it would otherwise produce. WAPA estimates that these costs could range from less than $1 million to an average of $35 million annually, depending on how flow release constraints are implemented. Under current operating procedures, however, CBO expects that WAPA would recover through higher electricity rates any additional costs resulting from flow restrictions. WAPA's rate-setting procedures could cause increased revenues to lag behind costs by one-to-two years, however, over the 1991–1995 period. Thus, there would be a net increase in outlays in 1991 or 1992, though the net impact over time would be neglible.

Title XI would authorize BOR to construct two irrigation systems in South Dakota and to conduct a demonstration project, with the assistance of an oversight committee, to study problems resulting from irrigation drainage. The bill would authorize a total of $200.3 million, plus inflation, to construct the authorized facilities and to make a contribution to a state Biological Diversity Trust Fund. Whatever sums are necessary to carry out the demonstration project also would be authorized. Nonfederal interests would contribute about $40 million to the construction costs.

Based on information provided by BOR, we estimate that, assuming appropriation of the necessary funds, enactment of Title XI would result additional outlays totaling $4 million in 1991 and about $22 million over the 1991–1995 period. Additional outlays after that time period, totaling about $245 million, would be necessary to complete the demonstration project and to construct the authorized facilities.

Title XII, the Fort Hall Indian Water Rights Act of 1990, would ratify an agreement between the State of Idaho, the Shoshone-Bannock Tribes, the United States and other specified parties. The Department of the Interior would be directed to provide storage space in certain federal reservoirs to specified nonfederal interests; forgive certain outstanding obligations to repay the federal government for the construction of that storage space; and provide for the use of water by the Tribes.

Title XI would authorize the appropriation of $22 million over the next three years to establish a tribal development fund ($10 million), to construct water management systems ($7 million) and to acquire land and grazing rights ($5 million).

CBO estimates that, assuming appropriation of the necessary amounts, enactment of Title XII would increase federal outlays by $10 million in 1991, $7 million in 1992 and $5 million in 1993.

Other titles of H.R. 2567 are not expected to have a significant effect on the federal budget.

6. Estimated costs to State and local governments: As a result of cost-sharing agreements with the federal government, nonfederal interests—primarily local water authorities (Titles I, II and III) and the states of Kansas (Title IV), Nevada (Title VII), and South Dakota (Title XI)—would agree to bear specified portions of the construction, operation and maintenance, and other specified costs of projects and activities authorized in this bill. These agreements would be negotiated individually. We have not yet completed an estimate of the total impact of the bill's enactment on state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: a. On September 20, 1990, CBO prepared a cost estimate for H.R. 3960, the Reclamation Projects Authorization and Adjustment Act of 1990, as ordered reported by the House Committee on Interior and Insular Affairs on August 1, 1990. The estimates for titles VII through X of H.R. 3960 are identical to the estimates for titles I through IV of this bill.

b. On July 30, 1990, CBO prepared an estimate of H.R. 4498, the Grand Canyon Protection Act of 1990, as ordered reported by the House Committee on Interior and Insular Affairs on July 18, 1990. That estimate is the same as the estimate for title X of this bill.

c. On November 9, CBO prepared estimates of the following bills:

S. 1121, a bill to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir;

S. 486, a bill to authorize the Secretary of the Interior to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, and for other purposes; and

S. 1275, the Leadville Mine Drainage Treatment Act of 1989.

These bills were ordered reported by the Senate Committee on Energy and Natural Resources on November 1, 1989 and our cost estimates for them are identical to the estimates for Titles I, II, and III, respectively, of H.R. 2567.

d. On November 8, 1989, CBO prepared an estimate of S. 53, a bill to authorize the reformulation of the Cedar Bluff unit of the Pick Sloan Missouri Basin Program, Kansas, to provide for the enactment of water service and repayment contracts, as ordered reported by the Senate Committee on Energy and Natural Resources on November 1, 1989. That estimate is the same as the estimate for title IV of this bill.

e. Also on November 8, 1989, CBO prepared an estimate of H.R. 2567, the Reclamation Projects Authorization and Adjustment Act of 1989, as ordered reported by the House Committee on Interior and Insular Affairs on November 1, 1989. The estimated costs for Titles I through IV of both versions of the bill are the same.

9. Estimate prepared by: Theresa Gullo.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2567, as reported. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2567, as reported.

Executive Communications

The Committee received no executive communications regarding H.R. 2567, as amended. However, because the 12 titles of H.R. 2567, as amended by the Committee, are in many cases similar to individual bills considered by the Water and Power Subcommittee, executive communications relating to those individual bills are reprinted in this section.

TITLE I—BUFFALO BILL DAM (S. 1121)

On June 20, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1121. These reports had not been received at the time the report on S. 1121 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF JOE HALL, ACTING COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am here today to testify in favor of S. 1121, a bill "To authorize modifications and additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming."

This legislation would increase the Federal appropriations ceiling on the project to $80 million, an increase of about $11.3 million. The increase is necessary if Reclamation is to accomplish the three objections that I will describe momentarily.

The modifications to the Buffalo Bill Dam project were authorized on October 12, 1982, with an appropriation ceiling of $106,700,000 (October 1982 price levels) including non-Federal cost sharing. By the end of this fiscal year when the project will be about 60 percent complete, it is estimated that the indexed ceiling of $116 million will be exceeded by about $17 million of which $6 million will be provided by additional cost sharing by the State. The State of Wyoming is a cost-sharing partner in the project and initially planned to contribute $47 million as its share of project costs. In 1989, the State increased its contribution by $5 million for

additional work at the project, plus an additional $1 million through the Wyoming Recreation Commission for recreational facilities at Buffalo Bill State Park. While the recreational facilities are being 50-50 cost shared, the State will be paying about 40 percent of the total cost of the project.

In addition to increasing the water storage and power generation capacities of Buffalo Bill Dam, the modification project is being constructed to provide benefits for fish and wildlife resources. Fish screens have been incorporated into both the North Fork and South Fork dust abatement dikes. The screens will prevent the passage of rough fish from the dust abatement ponds to the reservoir and prevent trout from being diverted from the river into the impoundment.

Waterfoul nesting islands are being constructed in the area inundated by the South Fork dust abatement pond. A 2-acre wetland for fish and wildlife habitat is being constructed in the Diamond Creek area to replace the Irma Flats Pounds that will be inundated by the enlarged reservoir.

Reservoir boundary fencing is being constructed to enable reservoir lands to be managed to planned uses. When completed, the fencing will significantly improve wildlife and wetland values througout the reservoir area.

The increase in the Federal appropriation ceiling authorized through passage of S. 1121 will enable these activities to continue to completion.

S. 1121 will accomplish three objectives:

1. Increase the Federal share of project costs by about $11.3 million to a total of $80 million. The increase is needed to cover changes and improvements in the project plan which have occurred since feasibility studies were completed in 1972.

2. Authorize construction of an additional 4.5-megawatt generating unit which will bring total new generation at the project to 25.5 megawatts. Funds for construction of this additional generating unit would be requested only if a market analysis of this resource shows it to be marketable and cost effective. The Western Area Power Administration recently completed a study at Reclamation's request, which is under review.

3. The State of Wyoming wishes to more fully develop the recreational potential of the modified project and is proposing to construct new recreational facilities beyond what was authorized in 1982. The cost of these new facilities would be shared equally by the State and the Federal Government, and S. 1121 authorizes the construction of these additional recreational facilities and the $1 million Federal share of the costs of these facilities is included in the revised project appropriation ceiling.

Completion of the project is scheduled for 1992. However, if the Federal appropriation ceiling is not increased by October 1, 1989, project completion could be delayed. Important contracts scheduled for award in early fiscal year 1990 would be postponed, further increasing the cost of the project. The State of Wyoming supports this legislation and we believe enactment of this legislation will enable the Federal Government to meet its commitment as a cost-sharing partner.

If there are any questions, I would be pleased to answer them at this time.

TITLE II—LEADVILLE MINE DRAINAGE TUNNEL (S. 1275)

On July 17, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Environmental Protection Agency and the Office of Management and Budget setting forth executive views on S. 1275. These reports had not been received at the time the report on S. 1275 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Environmental Protection Agency and the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF MAX H. DODSON, DIRECTOR, WATER MANAGEMENT DIVISION, REGION VIII, U.S. ENVIRONMENTAL PROTECTION AGENCY

Thank you for this opportunity for EPA to submit testimony on the U.S. Bureau of Reclamation's water treatment facility at the Leadville Drainage Tunnel in Colorado as described in S. 1275.

EPA and its predecessor agencies have been aware of the pollution of the Arkansas River in Colorado from past and present mining activities for decades. For the past 15 years, EPA has worked with the Bureau of Reclamation, Colorado Department of Health, and others to identify and develop solutions to the different sources of toxic heavy metals in the drainage. We are convinced that the construction of a water treatment plant at the Leadville Drainage Tunnel will put an end to over 40 years of toxic discharges into the Arkansas River from this major source of toxicity. This cleanup will be one of many in the Upper Arkansas drainage which are expected to return major portions of it to the "Gold Medal" fishery designation it once had in earlier years.

EPA and the Bureau entered into a Federal Facility Compliance Agreement in February of this year to implement the above corrective actions. The Agreement set forth treatment design criteria which address both general (whole effluent) toxicity and chemically measured toxicity, and provided the following compliance schedule for the construction of a water treatment facility to meet these criteria:

1. Complete design and preparation of treatment plant specifications by August 1, 1989.
2. Commerce construction of treatment plant by May 1, 1990.
3. Complete construction of major treatment units by September 1, 1991.
4. Attain operational status of all major treatment units by June 1, 1992.

The Tunnel was constructed during World War II and the Korean War to drain the underground mine workings in the Leadville area. The Bureau obtained title to the Tunnel from the U.S. Bureau of Mines with the intent of using the water as part of the Fryingpan-Arkansas Water Project.

The drainage from the Tunnel contains elevated levels of toxic metals, chiefly cadmium, zinc, and iron, and has exceeded the

limits of its NPDES Discharge Permit since 1977. EPA and Bureau studies have shown that the Tunnel's discharge has an adverse impact on the biota of the Arkansas River. The Tunnel contributes to the poor water quality of the Upper Arkansas River, and EPA has identified the Tunnel as a source of toxic pollutants pursuant to section 304(l) of the Clean Water Act.

The Tunnel is the subject of a January 13, 1989 citizen suit filed against the Bureau by the Sierra Club and the Colorado Environmental Coalition for past violations of its NPDES discharge permit.

The Leadville Drainage Tunnel should not be confused with the adjacent California Gulch—Yak Tunnel is one of Colorado's fourteen "Superfund" sites and another large contributor of toxic contamination to the upper Arkansas River. Part of the separate cleanup plan for the Yak is now underway. Last November, a "surge pond" was built near the month of the Yak Tunnel designed to prevent surges of acid mine drainage into the Arkansas River such as occurred in 1983 and 1985.

The Bureau has been studying the Leadville Drainage Tunnel problem since 1978 and has already undertaken some steps to improve the quality of the Tunnel discharge. In 1988, the Bureau conducted a pilot plant study to test the feasibility of the treatment scheme for the Tunnel and has since begun design of a full scale facility to meet permit and water quality standards. The Bureau expects to complete design and preparation of plans and specifications very soon, and construction is scheduled to begin in May 1990.

Once operational, the plant will have to meet strict effluent limits. Plan operators will perform periodic monitoring of the effluent and the receiving stream and report the result to EPA and the Colorado Department of Health. The permit limits for zinc, copper, lead, cadmium, silver, general whole effluent toxicity, and pH will be set at levels to protect cold-water stream aquatic life.

The Bureau has taken the position that it must obtain Congressional authorization and funding for this badly needed project and is attempting to do so in this Congressional session with bill S. 1275. The Bureau estimates they will need about 10 million dollars to complete the project.

EPA supports this project to improve the water quality of the Arkansas River and believes that the project is long overdue. This project, along with others in the Upper Arkansas River Basin, are necessary to improve the fishery in the River. We urge that the provisions of S. 1275 dealing with the financing of the project be favorably received by the Subcommittee.

STATEMENT OF JOE HALL, ACTING COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am here today to testify in support of S. 1275 a bill "to authorize the Secretary of the Interior to construct, operate, and maintain a water treatment plan for the purpose of treating water discharged from the Leadville Mine Drainage Tunnel near Leadville, Colorado, in order to meet water quality standards, and for other purposes."

Leadville Mine Drainage Tunnel is located near the small mining community of Leadville in west-central Colorado. The tunnel was constructed by the Bureau of Mines during World War II for draining water emanating from the mining of strategic metals needed for the war effort. The Bureau of Reclamation accepted custody of the tunnel in 1959 with the intent of using tunnel discharges for Fryingpan-Arkansas Project purposes. Reclamation was unsuccessful, however, in obtaining rights to the water discharged from the tunnel.

The tunnel is 2.1 miles long and discharges approximately 4 cubic feet per second directly into the East Fork of the Arkansas River.

In March 1975 the Environmental Protection Agency, pursuant to the Clean Water Act, issued a National Pollution Discharge Elimination System (NPDES) permit for the tunnel because tunnel effluent is contaminated with heavy metals, e.g. cadmium, lead, and zinc, which exceeds applicable limitations. The permit authorizes a discharge from the tunnel as long as certain effluent limitations are met. Reclamation has consistently been in noncompliance with the NPDES permit since it was issued.

Pursuant to the authorization in the Reclamation Authorization Act of 1976 (90 Stat. 1324, 1329), Reclamation initiated a series of investigations directed at identifying corrective measures which would bring tunnel effluent into compliance with the NPDES permit. Completion of these studies, which included groundwater hydrology, impacts of plugging the tunnel, various alternative methods for treating the discharges, and construction and operation of a pilot treatment plant has provided Reclamation with a sound basis for deciding that construction of a water treatment plant and concrete lining of a portion of the tunnel are the most effective means of achieving EPA mandated water quality standards. In February 1989 Reclamation and EPA entered into a compliance agreement which includes a schedule that shows onsite construction beginning by May 1990.

Section 101 of S. 1275 authorizes the Secretary of the Interior to construct, operate, maintain a water treatment plant, including disposal of sludge produced by the treatment plant, and to install concrete lining on the portion of the Leadville Mine Drainage Tunnel needing rehabilitation.

Section 102 directs that costs associated with construction, operation, maintenance of the treatment facility be borne by the Federal Government. We believe this is appropriate since the tunnel was constructed to benefit the Nation and the contaminated effluent results from this construction. In addition, the Department of the Interior has obtained royalty agreements from about 80 percent of the known mine owners whose mines were benefited by drainage through the tunnel.

As a result of these agreements, the United States has received in payments a total of $779.12 which was paid by the Cadwell Mining Company prior to 1960. No efforts at further collections have been made because no mining is taking place in the mines covered by the agreements. We do not believe that additional efforts to collect from private sources would be successful. It is this condition that caused the Department of the Interior to not seek

cost sharing of the treatment plant by the mine owners. Section 103 places responsibility for operation and maintenance of the water treatment plant with the Secretary of the Interior and provides for contracting for those services.

As a result, Section 104 authorizes to be appropriated $10.7 million (October 1988 price levels) beginning October 1, 1989, to accomplish the work described in Sections 101 through 105.

Section 105 specifies that the treatment plant authorized by S. 1275 shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

I appreciate the opportunity to offer this statement. If there are any questions, I will be pleased to respond to them at this time.

TITLE III—LAKE MEREDITH SALINITY CONTROL (S. 486)

On July 17, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 486. These reports had not been received at the time the report on S. 486 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JOE D. HALL, ACTING COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON WATER AND POWER, COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. Chairman, I am pleased to appear before this Committee to discuss S. 486, a bill "to authorize the Lake Meredith Salinity Control Project, New Mexico and Texas."

Because of the unique circumstances of this specific project, the Bureau of Reclamation has no objection to enactment of S. 486, if modified to require all design and construction services provided by the Bureau of Reclamation are made fully reimbursable within three years at current interest rates.

Federal involvement by providing the technical expertise of the Bureau of Reclamation in this project makes good sense. The Canadian River Project was constructed as a Federal multipurpose project. That investment, which totals more than $90 million, is jeopardized by a salinity problem that may be solved with a small Federal expenditure. Project sponsors would provide approximately 70 percent of construction costs up front. They ask only for Federal support through design and construction management expertise. Thus, the Lake Meredith Salinity Control Project is distinguishable from other single-purpose municipal and industrial projects that should be fully funded by non-Federal entities.

The rural communities served by the project constitute an important segment of the economic vitality of the Texas Panhandle. Loss of a major source of water would seriously threaten the economic base of these rural areas.

The Canadian River Project, of which Lake Meredith is a part, was constructed in the mid-1960's by the Bureau of Reclamation. In addition to providing municipal water to more than 400,000 people in the Texas Panhandle, the project also provides significant flood control, recreation, and fish and wildlife benefits. The latter benefits—multipurpose in nature—may be threatened by increasing salinity levels.

The Canadian River Municipal Water Authority (CRMWA) assumed operation and maintenance of the project in July 1968. Since then, water delivery to the 11 CRMWA member cities has been continuous, averaging about 64,000 acre-feet annually.

Since impoundment began in 1965, Lake Meredith has experienced gradually increasing levels of salinity. In an effort to resolve this problem, several communities have initiated blending processes to mix well water with Lake Meredith water to dilute the salinity. Not all communities have the available ground water to accomplish this blending and the mixing process is expensive.

In 1972, with the support of local interests and the CRMWA, Reclamation initiated an investigation of the salinity problem. Through interpretation of hydrologtic and geologic data, it was concluded that much of the salt entering Lake Meredith originates from a shallow brine aquifer. A contributing factor to salinity problems has been periodic declines in the water levels at Lake Meredith.

The aquifer is under artesian prssure and forces sodium chloride brine into the Canadian River at a point near Logan, New Mexico. Reclamation believes the most cost-effective solution to the problem is the interception of the brine at the source by well pumping and disposal by deep well injection.

Environmental analysis of the approach in 1986 resulted in a finding of "No Significant Impact."

Since the source of the natural pollution is located in New Mexico, it would be necessary to construct the project features in that state.

As proposed in S. 486, the Lake Meredith Salinity Control Project would include the following conditions:

Authorize the Secretary to construct such principal features as production wells, observation wells, pipelines, pumping plants, brine disposal facilities and other appurtenant facilities to test the Lake Meredith Salinity Control Project in New Mexico and Texas.

The Bureau of Reclamation would be required to manage the design and construction management of project facilities. The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas for such services and construction costs.

Construction would not begin until a suitable contract has been executed by the Secretary with the Canadian River Municipal Water Authority of Texas, and until the State of New Mexico has granted the necessary permits for project facilities.

All costs of construction of project facilities would be advanced by the Canadian River Municipal Water Authority as the non-Federal contribution for implementation of this Act. These funds would be advanced on a schedule mutually accept-

able to the Canadian River Municipal Water Authority and the Secretary, as necessary to meet the expenses of carrying out construction and acquisition activities.

All project costs for verification, design preparation and construction management would be nonreimbursable as the Federal contribution toward the Project. Such costs would be considered environmental enhancement costs by way of water quality improvement, and are estimated at approximately 33 percent of the total project cost.

The Secretary would be required, upon entering into a mutually acceptable agreement with the Canadian River Municipal Water Authority, and upon the availability of appropriated funds, proceed with the preconstruction planning, preparation of designs with specifications acquired of permits, acquisition of land and rights, and award of construction contracts.

At any time following the first advance of funds by the Canadian River Municipal Water Authority, the Authority may request the Secretary to terminate activities then in progress. Such a request would be binding upon the Secretary.

We suggest that this section 4(b) be clarified by addition of the following sentence: "Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development." This language would forestall the interpretation that the Canadian River Municipal Water Authority would unilaterally terminate the project and thereby make the United States responsible for its completion as a nonreimbursable cost.

The Secretary would be required to transfer the care, operation, and maintenance of the projects works, upon completion of construction and testing, to the Canadian River Municipal Water Authority or an entity mutually agreeable to the States of New Mexico and Texas. As part of the transfer, the Secretary would be required to return unexpended funds advanced for the project, assign to the Canadian River Municipal Water Authority or entity the rights to any contract in force, convey to the Canadian River Municipal Water Authority or entity any real estate, easement, or personal property acquired with the advanced funds, and provide any data, drawings or other items of value procured with advanced funds.

Reclamation does request that at Section 3.(b), 1st line, the word "verification" be deleted. This modification will make the paragraph consistent with the remainder of the Act.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions the Committee may have.

TITLE IV—CEDAR BLUFF UNIT REFORMULATION (S. 53)

The pertinent legislative reports and communictions received by the Committee from the Office of Management and Budget and from the Department of the Interior setting forth Executive agency recommendations relating to S. 53 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 5, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 53, "To authorize the reformulation of the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, to provide for the amendment of water service and repayment contracts."

We do not oppose enactment of S. 53, but suggest four clarifying amendments.

The Cedar Bluff Unit of the Pick-Sloan Missouri Basin Project, Kansas, was authorized by the Flood Control Act of 1944 to provide flood control and to store intermittent flows of the Smoky Hill River for irrigation, municipal, fish and wildlife, and recreation purposes. Construction of the Unit was begun in April 1949, and the Unit was completed in July 1963. The facility is operated and maintained by the Bureau of Reclamation (the Bureau) in coordination with others in the Kansas River Basin.

S. 53 would authorize the Secretary of the Interior to contract with the State of Kansas for the sale of certain rights in the Cedar Bluff Reservoir for the sum of $365,424, plus the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the dam and reservoir. This sum would be in full satisfaction of the reimbursable costs associated with Cedar Bluff's irrigation facilities, including the Cedar Bluff Irrigation District's (the District's) obligations under the repayment contract.

S. 53 would also provide for the implementation of a memorandum of understanding between the Bureau, the Fish and Wildlife Service (the Service), the District, and the State of Kansas, to reformulate the Cedar Bluff Unit. This reformulation would consist of reallocating the capacity of the Cedar Bluff Reservoir to provide for fish, wildlife, recreation, flood control, and other uses for the benefit of all the users of the reservoir.

After this reformulation takes place, any revenues that are received from the sale of water from the reservoir in excess of operating expenses would go to the United States to help defray the cost of the project.

In addition, the Secretary would be given the authority to transfer the fish hatchery, and the related water rights, to the State for fish, wildlife, and related purposes. The Secretary would also be permitted to transfer the property connected with the District headquarters to the District, contingent upon the District's agreement to close down the irrigation system at no cost to the United States. After this transfer, the owners of the transferred interests, and any subsequent transferees, would be required to indemnify the United States against all liability with respect to all interests associated with the District headquarters. Finally, the Secretary would be given the authority to take all other actions consistent with the memorandum of understanding discussed above.

The Cedar Bluff Unit consists of the dam and reservoir, the irrigation distribution and drainage system, a fish hatchery built by the Service, and fish, wildlife and recreation facilities built by the State of Kansas.

The Cedar Bluff Unit provides irrigation service to 6,800 acres of land in the District, and municipal water to the city of Russell, Kansas. In addition, the Service holds water rights to supply water for its fish hatchery.

The District executed a repayment contract with the United States on December 3, 1959, for repayment of $730,680. As of September 30, 1986, the District has repaid $109,602, leaving an unpaid balance of $621,078

Since the completion of the Cedar Bluff Unit, there has been a severe depletion of the water supply into the reservoir. This water supply depletion, which is considered by the Bureau to be irreversible, is due to extensive soil and water conservation measures such as ponds on farms, and cropping practices such as contour plowing, as well as extensive ground-water development upstream from the project storage reservoir.

The District has received no irrigation releases since the 1978 irrigation season. As a consequence, the District has not realized adequate revenues to fulfill its contractual repayment obligations, and these obligations have had to be continuously deferred. The District is no longer in operation, and the fish hatchery is currently being operated by the State as a goose rearing facility.

We do not object to the passage of this legislation. This legislation would allow the Department to recover a substantial portion of its investment in this project. Without this legislation, repayment of the debt owed by the District could be deferred indefinitely, and the Federal Government may never receive repayment of its investment. Furthermore, the reformulation plan that is included in the memorandum of understanding agreed to by all the parties involved would provide for maximum utilization of the limited water resources that are currently associated with the Cedar Bluff Unit.

While we do not oppose passage of this legislation, we would suggest clarifying amendments to four provisions of S. 53.

First, section 3(a) should clarify that the Reclamation Fund, and not the general fund of the U.S. Treasury, should be reimbursed for the costs of construction of the Cedar Bluff Unit. Currently, the last sentence in section 3(a) (lines 6–10 on page 3) reads:

> After the reformulation of the Cedar Bluff Unit authorized by this Act, any revenues in excess of operating expenses received from the sale of water at the Cedar Bluff Unit shall be allocated to pay the United States for the cost of the project.

This section could be interpreted to require that the revenues received by the United States in excess of operating expenses would go into the U.S. Treasury as general revenues, rather than the Reclamation Fund. The Federal funds expended to complete the irrigation and drainage system came from the Reclamation Fund, and not the general fund. Therefore, to clarify this fact, we would rec-

ommend that the last line of section 3(a) be amended to read as follows:

> After the reformulation of the Cedar Bluff Unit authorized by this Act, all net revenues received by the United States from the sale of water at the Cedar Bluff Unit shall be credited to the Reclamation Fund.

Second, we would suggest that on line 3, page 3, the word "the" after the phrase "satisfaction of" be deleted, and replaced with the word "all". This line would then read, "* * * satisfaction of all reimbursable costs associated with irrigation * * *." This change would clarify the intent of the legislation that all of the reimbursable costs associated with irrigation and the District's financial liability for this project would be extinguished.

Third, we would recommend that section 3 be amended by adding the following sentence at the end of subsection (b):

> If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

This amendment would ensure that the property transferred by this subsection would be used for the purposes intended by this legislation. Furthermore, it would make S. 53 consistent with the intent of the memorandum of udnerstanding referred to in section 1 of the bill.

Finally, section 4 of the bill would protect the United States from liability associated with the District headquarters after transfer. However, the United States may still be liable for the other facilities transferred under the provisions of the bill. We do not believe that this was the intended result of this legislation.

In order to rectify this problem, we urge the Committee to amend S. 53 to protect the United States from liability associated with all of the lands and facilities that would be transferred by this bill. Specifically, the last sentence of section 4 should be deleted, and a new section 4 should be added, which would read as follows:

> The transferees of any interests conveyed pursuant to this Act shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DOYLE G. FREDERICK,
Acting Assistant Secretary.

TITLE V—RENAMING THE SALT-GILA AQUEDUCT (S. 1556)

No Administration comments on S. 1556 were received.

TITLE VI—WARREN ACT SUPPLEMENT (S. 2716)

Testimony provided by the Bureau of Reclamation on S. 2716 follows:

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER OF RECLAMATION

Mr. Chairman, S. 2716 is an effort to resolve a major deficiency in the Warren Act. The Bureau of Reclamation supports the concept of amending the Warrent Act to allow greater use of facilities in managing water resources. We do, however, have some specific concerns that must be addressed in order for the Administration to support S. 2716.

The basic objective of S. 2716 is to broaden the purposes of the Act to permit cities and other urban area water agencies to contract with the Secretary to utilize excess capacity in Bureau of Reclamation facilities for municipal and industrial water supplies.

The Warren Act is one of the early acts governing the reclamatin program. It authorizes the Secretary of the Interior to contract with certain non-Federal entities:

> to permit them to utilize existing excess capacity in Bureau of Reclamation project facilities for the storage, impoundment, or carriage of water for irrigation purposes and for which a state water right is held;
>
> for the participation by non-Federal entities in the construction of project works which are in excess of the capacity required to irrigate project lands; and
>
> for them to construct project facilities prior to Reclamation's initiation of project construction and receive credit for their contribution to the project.

A Warren Act contract may provide for the delivery of irrigation water to either or both lands within and without the congressionally authorized service area of a reclamation project.

The Warren Act was not intended, nor does it provide, authorization for the sale of surplus water from the Federal project. The Warren Act was intended to provide authorization for the use of the excess storage or conveyance capacity of Federal facilities for the use of landowners who have water rights independent of those that they may have or be able to obtain through the United States. The rationale for this authorization was both pragmatic and beneficial.

Moreover, in most cases the Federal facilities have been constructed in the most desirable locations. Absent the Warren Act, Federal contractors who have non-Federal water rights, in addition to their reclamation contracts rights, or landowners with only non-project water rights, would have only one option to address their storage and conveyance needs. They would have to build their own impoundment and delivery facilities and, thus, duplicate that which was already available in the Federal facilities. The Warren Act allows the excess capacity of Federal reclamation facilities to be utilized in a logical fashion for the purpose of conveying reclamation project water, as well as non-reclamation project water. The Warren Act avoids the need to construct duplicate facilities, as well

as the wasted time, expense, and environmental impacts that would be associated with the construction of those facilities.

This is particularly important where non-Federal storage conveyance facilities are constructed by state or local entities within the same water system as the Federal facilities, and where all facilities (Federal and non-Federal) can be utilized most efficiently if they are operated in conjunction with each other.

The Act, as originally enacted, related solely to the use of excess capacity in reclamation project facilities for irrigation water. This limitation was consistent with the major uses of reclamation water at the time the Act was passed. In recent years it has become obvious that the Act should be updated. The purpose of these amendments is to authorize the Secretary to enter into contracts, pursuant to the Warren Act, for municipal, industrial, domestic, or miscellaneous purposes, including fish and wildlife purposes.

We recommend that the bill be amended to clarify the types of non-Federal entities with whom the Secretary may contract pursuant to the Act to include cities, water agencies, and other political subdivisions of a state, as well as such other entities as the Secretary may find appropriate.

We have additional concerns relating to the impact of section 3 on current Warren Act contractors, and propose that section 3 be deleted. The House deleted a similar provision in H.R. 2567 prior to its passage.

We also believe that any amendments to the Warren Act should address appropriate charges for the use of facilities to provide municipal and industrial water supplies.

Mr. Chairman, we would be pleased to work with you to resolve these concerns.

TITLE VII—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT (S. 1554)

The Administration's extensive testimony on S. 1554 as introduced is reprinted in a report of the Subcommittee on Water and Power, S. Hrg. 101-669. Subsequent correspondence concerning S. 1554, as amended, follows:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 2 1990

Honorable Bill Bradley
Chairman, Subcommittee on
Water and Power
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter follows up on the Committee's hearing of February 6, 1990, on S. 1554. At that time, the Committee announced that it would stay action on the bill in hopes that further progress could be made in reconciling the views of the various parties with an interest in the legislation. Though there are still some divergent interests, substantial progress has been made in reconciling key interests and concerns. Most significantly,

-- Representatives of the States of California and Nevada and the Administration have reached agreement on language for Title I of S. 1554 providing for an apportionment of interstate waters in the Lake Tahoe, Truckee River, and Carson River Basins.

-- Representatives of the Pyramid Lake Paiute Tribe, Sierra Pacific Power Company, and the Federal Government have agreed to modifications to the Preliminary Settlement Agreement which provides the foundation of Title II of S. 1554.

Further agreement has not been reached on a variety of other issues including cost sharing by the State of Nevada and settlements for the Pyramid Lake Paiute and the Fallon Paiute-Shoshone Tribes.

We have also discussed the Operating Criteria and Procedures (OCAP) which govern certain diversions and reservoir levels for the Newlands Project. While the OCAP is not addressed in S. 1554, it and the current litigation involving the Pyramid Lake Paiute Tribe, the Truckee Carson Irrigation District (TCID), the State of Nevada, the United States, and other parties are so intertwined with elements of S. 1554 that we believe it should be directly addressed in the legislation.

The Administration has used the period since February to work with many of those with interests affected by S. 1554 and to refine the position of the Administration into a comprehensive set of recommendations for modification and enactment of this Act. A copy of the Administration's proposed language and an explanatory statement of views are enclosed with this letter.

These modifications are designed to protect endangered species in Pyramid Lake and the wildlife values of the Lahontan Valley wetlands, provide drought protection to residents of the Reno-Sparks area, establish a firm foundation for interstate allocations of the two river basins, and provide a solid basis to settle water issues related to the Newlands Project and the Pyramid Lake Tribe in ways which further the interests of all affected parties.

Specifically, and as elaborated further in the enclosed explanatory statement and proposed language modifications, the Administration proposes that Congress enact S. 1554 in a modified form which:

1. Implements the interstate allocation of water in the two basins as agreed to by the two States and the Administration;

2. Authorizes implementation of an Operating Agreement for the Truckee River which will incorporate the goals of the Preliminary Settlement Agreement, with the modifications agreed to by the Pyramid Lake Paiute Tribe, Sierra Pacific Power Company, and the Administration. Those modifications are incorporated in a document titled "Ratification Agreement by the United States of America" which in turn incorporates as Exhibit "A" a conformed copy of the Preliminary Settlement Agreement, copies of which are enclosed. The agreements would ensure that existing water rights are honored while modifying reservoir operations to protect endangered and threatened fish in the lower Truckee River and Pyramid Lake and to help reduce the effects of drought conditions on residents of the Reno-Sparks area in Nevada;

3. Conditions the Operating Agreement on arrangements for payment for storage rights and supply of power by Sierra Pacific Power Company. Receipts from the storage rights and power sales would be dedicated to the extent necessary for operation of Stampede Reservoir and its power plant and for enhancement of fish and wildlife values in the Lahontan Valley wetlands and the Pyramid Lake fishery and for payments to the Reclamation Fund in lieu of standard project repayment;

4. Establishes Stillwater as a National Wildlife Refuge and provides for acquisition and use of water and water rights to protect the fish and wildlife values and wetlands of the Lahontan Valley;

5. Improves the prospects for recovery of the endangered cui-ui and threatened Lahontan cutthroat trout through items 2 and 3 above, through development of a recovery plan and through direct acquisition of water rights as necessary for protection of the cui-ui;

6. Establishes a foundation for settlement of past OCAP issues and litigation with the Pyramid Lake Paiute Tribe, TCID, the United States, and others. This is accomplished through establishment of a settlement fund for the Pyramid Lake Paiute Tribe and authorization for cancellation of all or a portion of the outstanding debt of the Newlands project. The Newlands Project provisions are intended also to lead to settlement of current OCAP litigation with TCID and improve the prospects for settlement with the Pyramid Lake Paiute Tribe;

7. Provides incentives for cost sharing by the State of Nevada and local government through water acquisition for Lahontan Valley wetlands, management of the Carson Lake wildlife and Indian Lakes recreation areas, and financial participation in Newlands Project improvements;

8. Facilitates settlement with prejudice of a variety of legal issues involving water resources in the Truckee and Carson River Basins as included in the original bill;

9. Provides sufficient time for Endangered Species Act consultation and National Environmental Policy Act compliance prior to implementation of items 1 and 2 above; and

10. Requires that water rights transfers involved in any of the above items be accomplished in accordance with applicable State law.

These items have been coordinated within the Department of the Interior and with the Departments of Justice, Army, Navy and Energy and the Office of Management and Budget. As such, they reflect the position of the Administration on S. 1554 at this time. We remain open, however, to further discussions which could serve the cause of further reasonable water settlements among parties in the Truckee and Carson River Basins having interests in the subjects covered by this letter.

We have not at this time included language in our text addressing settlement of water-related issues with the Fallon Paiute-Shoshone Indian Tribe. The tribe is now prepared to negotiate, Interior has a negotiating team in place, and a negotiating meeting date has been requested by Interior. It would be our hope that negotiations thereafter could progress rapidly to a settlement and that such a settlement could be incorporated in S. 1554 prior to enactment. We will keep you advised of progress on this matter.

It should be noted that Titles I and II, reflected in items 1, 2, and 3 above, must be enacted together, and our support for Title I is contingent upon the enactment of Title II as it is proposed to be revised. Additionally, item 6 relating to further settlement efforts as to Newlands Project issues is reflected in

our proposals for Title V and a new title (Title VI) relating to the Newlands Project. The Administration also considers it essential that the primary elements in Title V and the new title, as noted in the enclosed explanatory statement, be made contingent on settlements (multilateral or bilateral) of some issues related to the OCAP.

In closing, we would like to note the unusual level of bipartisan interstate and Federal interbranch and interagency cooperation that has taken place in assisting the Administration to formulate this position. Your staffs have been particularly constructive in this effort. Staff level discussions provide substantial promise that the positions outlined herein are reasonably consistent with the views of the Committee in resolving the difficult set of water-related problems of national interest in the two river basins.

Sincerely,

Assistant Secretary
for Water and Science

Enclosures

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 19 1990

Honorable James A. McClure
United States Senate
Washington, D.C. 20510

Dear Senator McClure:

Your staff has asked the Department of the Interior for its views on the current draft of S. 1554 including a proposal that an economic development fund for the Pyramid Lake Paiute Tribe be funded at $50 million. It should be noted that the drafts of S. 1554 are continuously being revised and any remarks on the substantive parts of the text must be taken as preliminary. Also I must point out that the comments in this letter pertain only to the specific sections discussed. Interagency review of the entire draft is continuing.

The current working draft as we understand it at this time is a substantial improvement over the bill as introduced and reflects well on the willingness of many parties in Nevada, California, and Washington, D.C., to resolve some very thorny problems. Nonetheless, we have several major concerns with the draft that we believe must be corrected prior to enactment, particularly the costs associated with a $50 million economic development fund. The Department could not recommend that the President sign an enrolled bill unless these concerns are satisfactorily resolved.

First, despite some language to the contrary, sections 301(a)(2) and 301(a)(3) of the current draft establish a water rights transfer selection process. This process appears to be tied in a vague manner to unclear conditions that may give rise to litigation over the acquisition and transfer of water rights to restore the Stillwater marsh and protect certain other wetlands in the Lahontan Valley. The Fish and Wildlife Service's existing water rights acquisition authorities are more robust than those provided in section 301 of the draft, and we do not wish to compromise those authorities or our wetlands restoration effort for Stillwater or other wetlands in the Lahontan Valley. Existing authorities, of course, are subject to applicable court decrees and are designed therefore to transfer water rights actually in use under procedures established by State law. This would seem to be a sufficient guarantee of the appropriateness of the program. We believe that it would be a serious mistake to

place a cloud over the transfer authority. We strongly suggest the Administration's proposed language be used instead or, at a minimum, that report language make clear that the bill language is intended only to ensure that inappropriate water rights are not being transferred.

Second, we are concerned that sections 702(d), (e), and (f) dealing with fish and wildlife regulatory matters could allow the Pyramid Lake Tribe to compromise those resources. In that circumstance, an argument might be made that the United States had incurred a liability and that the Tribe was due compensation. This could be corrected by providing approval authority to the Secretary for any referenced regulations or intergovernmental agreements or by explicitly waiving any potential claims for damages.

Finally, we strongly oppose the $20 million proposed for an economic development fund for the Pyramid Lake Tribe and the limitations that only claims for monetary damages against the United States be released for access to the fund. The Administration proposed $5 million for such a fund on the basis that it be conditioned on a release of ". . . any and all claims . . . prior to the date of enactment of this Act, including but not limited to claims of failures to enforce the Endangered Species Act or other Federal laws." In considering this legislation, it is important to remember that it is not an Indian water rights settlement. The claims of the Pyramid Lake Paiute Tribe were settled in the Orr Ditch decree, and the decree of that court is confirmed in this legislation. The Tribe was also compensated in 1975 by the United States for claims that were not asserted in the Orr Ditch litigation. This legislation deals with the resolution of various competing demands for the limited waters of the Tahoe, Truckee, and Carson Basins. The Pyramid Lake Tribe has an interest, obviously, in that allocation but does not have water rights at issue. They are the incidental beneficiaries of the United States' interest in an adequate supply of water for the endangered and threatened species that reside in Pyramid Lake, and in fact are in opposition to the United States concerns for adequate water supplies for the fish and wildlife in the Lahontan Valley. The legislation, for example, would require water conservation at the Fallon Naval Air Station and redirect the conserved water to Pyramid Lake, a result that the Tribe sought in recent litigation and which the courts rejected.

The proposed $20 million is excessive considering what little is being settled by way of litigation in S. 1554 and in consideration of the substantial benefits that would accrue to the Tribe through implementation of S. 1554. Our concerns are as follows:

1. The court cases listed in S. 1554 to be resolved do not present significant legal issues or commitment of significant resources in their defense. Three of the four are inactive or near conclusion.

2. Any claim on the part of the Pyramid Lake Tribe for water illegally diverted by the Truckee-Carson Irrigation District (TCID) is weak indeed, considering that it has no defined water right compromised by the diversion.

3. The United States has a good claim, independent from any claim on behalf of the Tribe, for water restitution due to violation of the United States' contract with TCID and pursuant to the Endangered Species Act and the Department expects to ask Justice to pursue that claim.

4. The amount of money is out of proportion to any possible recovery by the Tribe, which necessarily would have to be measured in terms of lost cui-ui and Lahontan cutthroat trout rather than water prices.

5. The Pyramid Lake Tribe benefits significantly from the many other provisions of the current draft of S. 1554. Specifically,

-- the Tribe's Orr Ditch Decree claims would be ratified by statute, thereby protecting against any claims of abandonment (the Tribe is not exercising all of its current irrigation rights);

-- additional water in Pyramid Lake would result from the conservation measures that would be required in the Reno-Sparks area including installation of water meters, a conservation pricing program and a conservation plan;

-- there would be benefits to the Pyramid Lake fishery from the relinquishment by Sierra-Pacific of single purpose water rights for hydropower and the conversion of current water rights used for drought protection in the Reno-Sparks area to fishery credit water;

-- water conserved at the Fallon Naval Air Station would be transferred to Pyramid Lake;

-- the use of Stampede Reservoir for fishery benefits would be guaranteed by statute and operations at a second reservoir (Prosser Creek) also would likely provide fishery benefits;

-- a water rights purchase program for Pyramid Lake would be authorized;

-- the fishery would benefit from half the receipts of the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund;

-- revenues from a $25 million fisheries fund would be provided to the Tribe for fishery restoration and development;

-- operating criteria and procedures to conserve water in the Newlands Project are legislatively confirmed as ceilings;

-- the probability of recovering water to compensate for illegal diversions is enhanced by the incentives provided in Title VI for a settlement with TCID;

-- Pyramid Lake may receive substantial amounts of additional water as a result of the conversion of water rights for wetlands use at less than their irrigation entitlement;

-- the amount of water that can be diverted from the Truckee River by California is limited by statute;

-- the trust status of the reservation is confirmed by statute;

-- enforcement authority over fish and wildlife resources is confirmed by statute; and

-- it is expected that the Tribe will obtain a water right to all unappropriated water in the Truckee River and, if it is not satisfied on this issue, it can veto the interstate water allocation provided in Title I and the Operating Agreement provided by Title II.

It is fair to say that the Pyramid Lake Tribe would be a net beneficiary of this legislation without any monetary settlement.

Additionally, it should be noted that the Federal Government has contributed substantially to the Pyramid Lake Tribe and the fishery. This includes,

-- an $8.5 million payment to the Tribe in 1975 to settle the issue of failure to assert a water right claim on behalf of the Tribe's interest in the fishery;

-- converting Stampede Dam and Reservoir, an approximately $22 million facility, from its original multipurpose planned use to a nearly exclusive use for enhancing or allowing fish spawning runs;

-- financing three Pyramid Lake Tribe hatcheries at a cost of approximately $5 million and continuing to provide hatchery and other fishery program costs over a 15-year period with a current annual cost of $1 million per year;

-- providing 83 percent of the fish production from the Lahontan National Fish Hatchery since 1978 at a current annual cost of approximately $280,000;

-- preparing two recovery plans (1980 and 1983) and initiating work on a third using the research results and experience gained under the first two;

-- building Marble Bluff dam and fish ladder at a Federal cost of $7.6 million which, though not sufficiently satisfactory from the standpoint of the ladder, has made spawning runs possible;

-- adopting the Operating Criteria and Procedures for the Newlands Project to assure greater efficiency on the Newlands Project and, in turn, increase flows in the Lower Truckee River and into Pyramid Lake; and

-- provision of attorney and expert witness fees to the Tribe in support of its litigation efforts, including suits against the United States in several instances.

These measures have not yet achieved the level of protection we hope to provide for the endangered cui-ui and the threatened Lahontan cutthroat trout. For that reason, the Administration is prepared to become a party to the Preliminary Settlement Agreement, is conducting a study of how to improve Truckee River Delta access, and is developing the new cui-ui recovery plan. That plan, when completed, will undoubtedly require additional actions of benefit to the endangered species. The authorities we are requesting in Title IV will assist in implementing such a plan. In short, much has and is being done to recover the cui-ui and improve the status of the Lahontan cutthroat trout, and we expect continued progress.

All of the discussion above related to a $20 million economic development fund is valid for a $50 million fund. We would, however, like to comment on the economics of the arguments made in favor of a larger fund. First, item 3 above is most important. The United States expects to pursue its claim for water recoupment. Thus, that issue is not being settled, and the Tribe could, if a court finds in favor of recoupment claims of the United States or a recoupment agreement with the irrigators is reached, end up being paid twice--once by the United States in

cash and once in water by the irrigators. S. 1554, in a recent version, also would not require that the Tribe drop any potential claims for water recoupment against the United States or the irrigators, thereby specifically resulting in a possibility of double payment.

Second, the allegation has been made that replacement water would cost $1,000 to $2,000 per acre-foot. That cost, however, (a) is high compared to going rates for water rights, and (b) is based on water rights, not water. The range of the price quoted is about twice or more above going rates and represents a water right in perpetuity--that is an amount received every year--rather than a one-time recoupment.

Third, the Bureau of Reclamation has made a preliminary estimate of about 825,000 acre-feet in illegal diversions. Additional work would be necessary to turn that number into a finding. The amount of water believed to be diverted could change substantially. The Tribe has no serious basis for a claim of 1 million acre-feet. Finally, the value that would be set for monetary damages would be based on fishery losses and would bear no relationship to water prices. There is certainly no reasonable basis for valuing the loss at $50 million.

I hope the above discussion is helpful in improving S. 1554. The Department stands ready to assist in this endeavor. However, I reiterate that the Department cannot recommend enactment of S. 1554 in its current form.

The Office of Management and Budget advises that there is no objection to the submission of this report, and that enactment of S. 1554 would not be in accord with the program of the President.

Sincerely,

John M. Sayre
Assistant Secretary -
Water and Science

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 26, 1990

Honorable Bill Bradley
Chairman
Water and Power Subcommittee
Energy and Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the position of the Department of Justice as to whether we insist upon settlement of all pending claims, by all parties, relating to the Operating Criteria and Procedures for the Newlands Reclamation Project in Fallon, Nevada (OCAP) as a precondition to the effectiveness of sections 704, 705, and 708 of H.R. 2567 as reported by the Senate Energy and Natural Resources Committee. In short, the answer is that we have never taken that position, and do not now.

As you know, we have tried unsuccessfully for several years to effect a settlement with the various parties to the OCAP and other litigation involving the Newlands Project. Based on this experience, we regard it as particularly unlikely that we can reach settlement with the Truckee Carson Irrigation District (TCID) over its OCAP claims. However, we continue to be open to such a settlement if it can be achieved on terms acceptable to the United States.

H.R. 2567 includes in section 709 several provisions to provide incentives to TCID to bring them to accept the current OCAP and withdraw their pending legal claims. It also includes some potential financial and other benefits for TCID and the farmers in the project. It has been and remains the Department's position that the bill should provide that any such benefits be conditioned upon a resolution of all outstanding litigation between the United States and TCID and other parties similarly situated.

It has never been our position, however, and is not now, that settlement of all OCAP claims by all parties be a pre-condition to sections 704, 705, and 708 becoming effective.

The Administration recommended that the Pyramid Lake Tribe, in return for an economic development fund of $5 million and a fisheries fund of $20 million, release all claims of any kind against the United States for damages to the Pyramid Lake fishery, as well as any claims that relate to any alleged failure to enforce the OCAP up until the effective date of the bill. We note that section 708 in combination with section 709(j) leaves open the possibility that the Tribe could receive a $50 million economic development fund without relinquishing any claims it may have against the United States. (Although section 709(j) would bar for 7 years the Tribe's pending OCAP claims and its action to enforce recoupment of allegedly illegally diverted water.) We could not recommend that the President sign legislation granting such a large sum of money even if the Tribe were required to release all of its claims. We likewise could not recommend approval of legislation for any economic development fund whatsoever unless the Tribe's above-mentioned enforcement and fishery damages claims were finally resolved. We have not asked the Pyramid Lake Tribe to give up all OCAP claims because we do not consider it necessary in light of other provisions in the bill.

We are discussing with the Fallon Tribe (which is also a party to the OCAP litigation) a separate settlement, and as a condition thereof, request that they give up any and all currently existing claims against the United States, including OCAP claims.

We highly desire the settlement of all claims, and will continue to seek such settlement, consistent with the interests of the United States. We do not, however, believe that one party should have a right to veto an advantageous settlement between other parties. Further, we believe that it is entirely possible and appropriate to settle with less than all parties to litigation, including the OCAP litigation, if acceptable terms can be reached. Were a provision to be inserted in H.R. 2567 making it effective only if all OCAP litigation is settled, it is our belief that the bill would likely never go into effect because of the extreme unlikelihood of successfully achieving any such universal settlement. We would, therefore, oppose any such requirement.

I trust the foregoing is responsive to your request.

Sincerely,

Bruce C. Navarro

Bruce C. Navarro
Deputy Assistant Attorney General

TITLE VIII—VERMEJO PROJECT RELIEF (S. 1932)

On December 14, 1989, and on June 15, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1932. These reports had not been received at the time this report was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION

I am pleased to have this opportunity to present testimony on S. 1932, which would clarify issues relating to the transfer of lands and facilities to the Vermejo Conservancy District, located in Northeastern New Mexico.

We would not object to enactment of S. 1932 if further clarifying language is incorporated. The bill is in the form of an amendment to title IV of the Act of December 19, 1980 (P.L. 96-550) which provided for the District and Reclamation to amend the repayment contract and for the transfer of lands back to the District as well as deferral of the District's repayment obligation to the United States for the construction, operation, and maintenance of the Vermejo Project. P.L. 96-550 authorized transfer to the District of all lands or interest in lands acquired by the Federal Government except those needed for management of the Maxwell National Wildlife Refuge.

The District and Reclamation have reached agreement on most of these issues but have been unable to reach a consensus as to which lands would be transferred to the District through amendment to the contract.

The controversy is centered around Dams 12, 13, and 14 which are currently operated by the U.S. Fish and Wildlife Service as part of the Maxwell National Wildlife Refuge.

The District currently holds title to Dams 12 and 14 and has a two-year lease agreement with the Service for the management of the hunting, fishing and grazing rights on and around those two lakes. This lease agreement is scheduled for renegotiation in 1992.

Reclamation currently holds title to Dam and Lake 13 which is operated for the benefit of the Refuge through an agreement among the District, Reclamation and the Service.

The District wishes to have title to Dam and Lake 13 returned to them through enactment of this bill. The Bureau of Reclamation would not object to the transfer of Dam and Lake 13 to the District if agreement can be reached on operational issues pertinent to the District and the Refuge.

Reclamation believes that this can be achieved by further clarifying the language of S. 1932 to state that the lands or interest in lands shall be transferred to the District with the exception of a perpetual conservation easement including the hunting, grazing and fishing rights which shall be retained in the United States, and be administered by the Secretary through the Maxwell Nation-

al Wildlife Refuge. Further, the bill should specifically identify those lands being retained by the Federal Government. This would eliminate substantial legal problems and clarify negotiations. Reclamation and the Fish and Wildlife Service have reviewed the language of S. 1932 and suggest the changes shown on the attachment to this testimony.

These changes would accomplish the objectives I have described and thus remove the impediments that have prevented the actions envisioned by P.L. 96-550.

Therefore, Reclamation would not object to S. 1932 with the changes I have recommended.

Mr. Chairman, thank you for the opportunity to provide comments on this matter. I would be pleased to answer any questions.

PROPOSED AMENDMENTS TO S. 1932

A BILL To amend title IV of the Act of December 19, 1980 (94 Stat. 3227) to provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation, and maintenance of the Vermejo reclamation project, and for other purposes

1. Page 2, line 9; following the word "District" insert "to amend Contract 178r-458".

2. Page 2, line 14; following the word "project," insert "with the exception of a perpetual conservation easement including the hunting, fishing, and grazing rights which shall be retained in the United States and be administered by the Secretary of the Interior through the Maxwell National Wildlife Refuge,".

3. Page 2, line 22; strike "and" and insert in lieu thereof "in place of".

4. Page 2, line 24; strike "1985" and insert in lieu thereof "1990".

5. Page 2, line 24; strike "1990" and insert in lieu thereof "1992".

TITLE IX—ELEPHANT BUTTE PROJECT (S. 1590)

On December 14, 1989, and on June 15, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1590. These reports had not been received at the time this report was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION

Mr. Chairman, I am pleased to appear before you today to provide the position of the Bureau of Reclamation on S. 1590.

The bill would transfer certain rights-of-way to the Elephant Butte Irrigation District so it may assume ownership over them.

Reclamation supports the concept of this legislation, but would like to suggest a few modifications.

The bill does not specifically state that the titles to Elephant Butte and Caballo Dams, and Percha, Leasburg, and Mesilla Diversion Dams would remain with the United States and, thus, could be

interpreted to allow the transfer of the diversion dams. It is Reclamation's position that the United States must retain ownership and operation of these dams since they have a significant impact on the amount of water delivered to other downstream users.

The El Paso Water Improvement District No. 1 has recently indicated that it is also considering requesting the transfer of rights-of-way for its portion of the project. Because of that new development, Reclamation suggests including the proposed transfer in this legislation, if that transfer is intended.

Both Districts have completed all construction repayment obligations to Reclamation and currently operate and maintain facilities in their respective Districts, with the exception that the United States operates the aforementioned diversion dams in the Elephant Butte Irrigation District.

I would be pleased to respond to any questions.

TITLE X—GRAND CANYON PROTECTION (S. 2807)

The testimony provided by the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER OF RECLAMATION

Mr. Chairman, I am pleased to appear before you today and provide the Department's position on S. 2807 to establish and implement power operating criteria at Glen Canyon Dam and to protect the environmental and recreational resources of Glen Canyon National Park. As the Department's representative, I am speaking on behalf of the Secretary.

The Department of the Interior shares the interest of the Committee and others concerning operation of the Glen Canyon Dam and the Glen Canyon Dam Environmental Impact Statement process. One of the most significant actions by the Secretary in his first half year in office was to direct that an EIS be prepared on the effect of the operation of Glen Canyon Dam on the downstream environmental and ecological resources of the Glen Canyon National Recreational Area and Grand Canyon National Park. In making that decision, Secretary Lujan stated the EIS would be prepared in full public view, with participation by all interested parties. He further stated the Department would use the EIS to comply with statutory requirements for the operation of the dam while protecting downstream resources.

The EIS is under way and open to full public participation. Nearly 1,400 people have attended public scoping meetings in 7 locations. We heard from 400 speakers and we have received thousands of written comments.

It should be pointed out, however, that Federally supported research of this nature did not begin last year. In fact, through the Glen Canyon Environmental Studies, or GCES, significant research has been ongoing since 1982. This work originated from the uprating program for the generators at Glen Canyon Dam powerplant. The purpose of that program was to determine the effects of the operation of Glen Canyon Dam on the downstream environmental and ecological resources of the Glen Canyon National Recreation

Area and Grand Canyon National Park. Over 40 individual research reports have been produced. One problem we encountered was that the initial research was conducted during the unprecedented high river flows of 1983–1986, thus affecting the range of data that could be collected. The Secretary directed that the GCES work continue to examine impacts under normal and less unusual conditions, and that the data developed be incorporated into the EIS.

The second phase of the GCES is now underway. A significant amount of current and future work to be done is dependent upon data from research flows from Glen Canyon Dam. These flows have been developed under the GCES program, analyzed by concerned and affected parties, and were initiated in June 1990 and are scheduled to continue at least through July of 1991. The public has been informed of the flow schedules and their purposes, as part of the EIS process.

The research flows are needed to determine the impact of Glen Canyon Dam operations on downstream environmental and ecological resources of the Glen Canyon National Recreational Area and the Grand Canyon National Park under normal and less unusual flow conditions of 1983–86 when the initial Glen Canyon Environmental Studies were conducted. We at the Department believe it is premature to significantly alter planned operations until after we have completed these research flows. The data we will collect from those flows will also be used to confirm the extent and nature of any interim power operating criteria that could be implemented, and to adequately understand the impacts of such interim criteria. At the same time, we are concerned that imposition of interim flows at this time would interfere with the research, and would alter the baseline from which changes and impacts are to be measured. Modification to any portion of the research flows, such as imposition of interim flows, could also require overall adjustments to the research flow program to meet storage and water delivery obligations.

Once this additional data are in hand, however, we believe we will be in a position to develop interim power operating criteria for operation of Glen Canyon Dam, and Secretary Lujan has directed us to do so within 90 days of the completion of the research flows. At the same time, the Secretary has directed that any interim operating criteria will not interfere with the Department's obligations relating to the storage and delivery of water. The period of up to 90 days would provide time to analyze the considerable amount of data collected and to prepare recommendations of changes to existing power operations for interim purposes.

These interim flows will remain in effect until the EIS is complete and a final decision made regarding the long-term actions that will be taken. The interim power operating criteria will be based upon careful evaluation of all relevant research as well as potential impacts on river regulation, reservoir uses, existing power contracts, CRSP system repayment, and operating revenues.

The Secretary's decision to go forward with interim operating criteria following the research flow period is based upon the desire to act promptly to protect the resources of the Grand Canyon National Park and the Glen Canyon National Recreation Area down-

stream from the dam. His decision is also based in part upon a determination on the part of Reclamation that we need to extend the completion date of the Glen Canyon EIS, until early 1993, which represents a 1-year extension of time. This reflects the additional time required to acquire necessary factual data as determined in the public and technical scoping process for the EIS and the second phase of the GCES. Given these actions by the Secretary, we believe the provisions of Section 4 of S. 2807 relating to interim power operating criteria are unnecessary.

The current situation does not involve critical or emergency conditions and the orderly development and implementation of interim flows at the conclusion of the research flows is by far the prudent option.

The Department does not support the position requiring only the use of non-reimbursable. Congressionally appropriated funds for the Environmental Impact Statement. We believe the use of power revenues was and continues to be an appropriate source of funding for studies associated with determining future power plant operations. The source of long term funding for monitoring needs to be addressed in the legislation.

In summary, the Department believes the Secretary has the appropriate existing authority and discretion to establish interim flows and to protect the environmental and ecological resources of the Glen Canyon National Recreation Area and Grand Canyon National Park. Above and beyond all such considerations is the fact that we are committed to producing an EIS and eventual decision that will stand as a model of responsiveness, openness, and integrity.

Mr. Chairman, I would be pleased to answer any questions Members of the Committee may have.

TITLE XI—IRRIGATION DRAINAGE DEMONSTRATION PROGRAM AND LAKE ANDES-WAGNER/MARTY II PROJECTS (S. 2710)

Testimony provided by the Bureau of Reclamation and Environmental Protection Agency at the Subcommittee hearing follows:

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION

Mr. Chairman, I appreciate this opportunity to testify on S. 2710, a bill "to authorize the Secretary of the Interior to construct, operate, and maintain the Lake Andes-Wagner and the Marty II Units, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota." The Administration opposes this bill unless amended as discussed below.

On December 15, 1987, and again on September 14, 1989, the Commissioner of Reclamation testified before this Committee on legislation similar to the bill being considered here today. On those previous occasions, Reclamation did not oppose authorization of the Lake Andes-Wagner Unit provided that the bill be amended to include—or retain—certain conditions as stated in the hearing record (S. Hrg. 101-328). I will refer to those conditions again later in my testimony.

In earlier testimony, the Bureau opposed authorization of the Marty II Unit primarily because the necessary water quality studies had not been completed. An important aspect of the studies included testing to determine the presence of trace elements in the soil and water within the boundaries of the proposed project area.

The studies are now complete. Test results indicate the presence of high levels of the trace element selenium throughout the Lake Andes-Wagner and Marty II project areas. Based on these findings, Reclamation does not believe it would be responsible to pursue Federal irrigation development in these areas of South Dakota at this time.

Administation support of S. 2710 is contingent upon amendments to delete authorization of the full-scale irrigation projects for Lake Andes-Wagner/Marty II. However, S. 2710 also contains authorization of a demonstration program which we believe has the potential of providing information on the effects of irrigation practices needed to deal with naturally-occurring trace elements in low permeability soils and in water. The findings may have applicability, not just in South Dakota, but in other areas of the Nation as well. The proposed demonstration program would be conducted on lands within the Lake Andes-Wagner and Marty II project areas and would also address irrigation and drainage practices in low permeability soils.

The Lake Andes-Wagner/Marty II demonstration program would not only focus on the development of irrigation and drainage best management practices applicable to other areas, but could also contribute to refinement of best management practices for fertilizer application, pesticide use, and other agricultural practices. The type of information to be gained in this demonstration could be most important to States in which intensive agricultural practices are being examined for improved water management on soils overlying glacial till and other low permeability soils. In order to gain that knowledge, best management practices will be demonstrated in actual on-the-ground situations under controlled conditions. The development and transfer of such best management practices important to Reclamation's program for sound water resources management.

What is learned from the demonstration program may differ from conventional irrigation and drainage practices which requently result in over-irrigation and excessive drainage. New management strategies may demonstrate considerable conservation of water and the energy to pump and apply that water. Management practices and return flow treatment processes developed in this study would have important application to some areas where problems with return flow water quality already exist. Development of methods for removal of contaminants from return flows from areas of low-permeability soils would be important in the cleanup and management of similar project areas with existing problems, and the prevention of contamination where no problems currently exist. The research will complement that for higher-permeability soils carried out in the San Joaquin Valley in California.

Reclamation has prepared a detailed Plan of Study for the demonstration program. This was a cooperative effort involving the input of numerous groups and agencies. Specifically, input and/or

review was received from the U.S. Fish and Wildlife Service; the Environmental Protection Agency; the Bureau of Indian Affairs; the USGS; the South Dakota Departments of Water and Natural Resources and Game, Fish and Parks; the Lake Andes-Wagner Water Systems, Inc., and the Yankton Sioux Tribe.

Conducting the demonstration program in the State of South Dakota would be of direct benefit and applicability to its activities and programs. However, there would also be potential benefits to the programs of the other Federal agencies and other states.

The information gained from the demonstration program would be useful to the Fish and Wildlife Service in carrying out its nationwide contaminants program. Furthermore, the enhancement of waterfowl habitat and refuge management capabilities would be provided as part of the wetland/wildlife enhancement feature of the demonstration program.

The Environmental Protection Agency is responsible for working with the States to develop management practices which curtail or minimize nonpoint source pollution, and to enforce appropriate water quality standards. At present, best management practices relative to irrigation and drainage have not been developed to deal with various agriculture-related nonpoint source pollution problems. In order to develop these best management practices, the mechanics of salt and trace element movement in different soil types needs to be studied and understood as proposed in the demonstration program.

For those important reasons, Reclamation believes the demonstration program is justified. We can support the demonstration program if the legislation is amended to provide for substantial cost-sharing by project beneficiaries and if the program is implemented by a memorandum of understanding between the various Federal agencies, with these agencies contributing to the cost. We have estimated the cost of the demonstration program to be $30 million over a ten-year period, and we recommend that this amount be specifically authorized in Section 8(2)(c). We also object to Section 4(a), which would require use of the alternative benefit evaluation procedure.

Should the Lake Andes-Wagner and Marty II Units receive congressional approval, I would suggest that the conditions recommended by Reclamation during previous testimony before this committee be incorporated into the authorizing legislation. The conditions have been modified to reflect the demonstration program concept. The terms and conditions are as follows:

1. Actual construction would not be authorized to begin until submission to Congress by the Secretary of the Interior of a supplement to the Planning Report/Final Environmental Statement finding that the project is both economically justified and environmentally feasible contingent on successfully demonstrating methods to prevent nonpoint source pollution as a result of toxic elements in the project soils, and project sponsors enter into a legally-binding agreement containing cost-sharing provisions acceptable to the Secretary;

2. No authorization of new full-service, non-Indian lands as part of the project;

3. Repayment on a straight-line amortization schedule not to exceed 40 years following the development period of any "irrigation assistance" needed from hydropower revenues for the project as well as those losts allocated to irrigation and signed for return by the water users; and

4. The legislation retain the provision that any crop program payments be based on pre-project, dry-land yields.

I would reiterate a point that was made in previous testimony that the Administration is committed to completing those Reclamation projects that are substantially underway. Should the Lake Andes-Wagner/Marty II Project be authorized, it would be the newest project, and therefore, would necessarily be placed at the end of the priority list for construction appropriations.

In order to preserve the discretion of the Secretary of the Interior and the President as to whether to request appropriations, and to when such a request is timely, we oppose the inclusion of language in Section 7(c) of this bill. That language requires the Secretary to request that the President include funds in the annual budget permitting completion of construction.

Section 2(f) of S. 2710 includes provisions for rural water supply development in conjunction with the Lake Andes-Wagner/Marty II project. It provides broad authorization to construct such facilities without any specific project or benefitting entity being identified. We cannot support this language and recommend it be removed from the bill.

Reclamation supports Section 2(g), Mitigation of Fish and Wildlife.

We defer to the Department of Labor with regard to Section 5 concerning Indian employment.

As I have already indicated, Reclamation is supportive of Section 3 which deals in some length with authorization of a Demonstration Program. I would offer at this time, however, that regarding Section 3(f), we believe the time frame provided in Section 3(f)(2)(C) is not adequate to prepare the required concluding report and recommendation. We suggest the language be changed to allow 1 full year following completion of field activities to allow for laboratory analysis and adequate review by the involved parties.

Regarding the remaining portions of this bill, we would once again point out the cost-sharing provisions contained in Section 7. Previous testimony from Reclamation expressed nonsupport for the project's cost-sharing plan. We suggest S. 2710 be modified to provide the Secretary the authority to negotiate a cost-sharing agreement more favorable to the United States, including provisions for upfront cost-sharing. Without such modification, Reclamation cannot support the sponsor's cost-sharing plan.

That concludes my testimony. I would be pleased to answer any questions Members of the Committee may have at this time.

STATEMENT OF MAX H. DODSON, WATER MANAGEMENT DIVISION, DIRECTOR, REGION VIII, U.S. ENVIRONMENTAL PROTECTION AGENCY

Thank you for this opportunity for EPA to submit testimony on the U.S. Bureau of Reclamation's Lake Andes-Wagner Demonstration Project.

The EPA Region VIII staff has participated in the review of the Plan of Study for the Demonstration Project, through the technical advisory committee and the management committee. EPA has been involved with the project through its review of environmental documents prior to 1985. The original EPA comments focused on water quality impact, loss of wetlands and the impact of heavy metals, especially selenium.

At this time, EPA feels that this demonstration project will provide a mechanism to address the original concerns and should provide valuable information that could be used to minimize impacts from irrigating selenious and glacial till soils.

EPA does not support the full scale project at this time. We feel that there is insufficient information available to properly evaluate possible impacts from the proposed level of irrigation. The full-scale project should not be given consideration until it can be demonstrated that this type of soil can be safely irrigated.

The focus of the present EPA effort is to ensure the development of an environmentally responsible demonstration project only. EPA has not made a judgment on costs of the demonstration project or an alternative.

We recognize the State of South Dakota's concerns and desire to develop effective Best Management Practices (BMPs) that will be utilized on these soils. We also recognize the need to develop a clear understanding of the behavior of selenium under these conditions. Studies are under way throughout the western United States to learn more about the chemical, bio-interactive, bio-accumulative and mobility characteristics of selenium. This demonstration project could contribute to our knowledge of the selenium problem and result in cost effective BMPs.

The literature search and proposed workshop will enhance the compilation of information and allow scientists the opportunity to strengthen the network of those working with similar problem. This will also assist the Bureau on developing proper protocols for the Lake Andes demonstration project.

It is important for the Bureau to have their procedures and findings undergo technical review and comments. Without defined procedures, the demonstration project will not provide the information the EPA and others will need to evaluate the possible impacts of the full-scale project.

The environmental analysis done to support the demonstration plan of study recognizes that there is a possibility of mobilization and the build up of selenium and salts in the soils. The project plans to halt irrigation if a problem with the return flows does develop, minimizing possible environmental impacts.

In summary, the water quality impacts and wetland losses for the full scale project remain concerns which have not yet been addressed by the Bureau. The research provided by the demonstration project could provide answers to some of EPA's concerns and information to develop management practices that are transferable to similar sites around the country. EPA sees this demonstration project as an essential first step before a decision on the full scale project.

TITLE XII—FORT HALL INDIAN WATER SETTLEMENT (S. 2870)

Testimony provided by the Bureau of Indian Affairs at the joint hearing conducted by the Subcommittee on Water and Power and the Select Committee on Indian Affairs follows:

STATEMENT OF PATRICK A. HAYES, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairmen, and members of the Committees, I am here to present the views of the Department of the Interior on S. 2870, a bill "To approve the Fort Hall Indian Water Rights Settlement, and for other purposes."

We support enactment of S. 2870 but recommend certain amendments discussed below. The bill provides for approval and implementation of the water rights Agreement entered into by the State of Idaho, the Shoshone-Bannock Indian Tribes, certain private water users, and the United States.

Unlike many Indian water rights agreements brought before the Congress for consideration, we believe this Agreement ushers in a new era in Indian water right settlements—an era in which it will be necessary for negotiating parties to fashion creative solutions to water conflicts fully utilizing existing water facilities rather than calling for construction of unnecessary new storage facilities with high financial and environmental costs. The Agreement also provides for cost sharing between the Federal and non-Federal parties that recognizes the fiscal constraints at the Federal, State and local levels. The Federal Government will commit approximately $22 million over a twenty year period and approximately 100,000 acre feet of unallocated storage space.

This Agreement innovatively resolves many issues regarding these Indian water claims which may have been left unresolved had the parties litigated these issues.

The Agreement provides that the Tribes' federal Indian reserved rights for surface and ground water are quantified and defined, allowing the tribes to use their water rights for irrigation, domestic, commercial, municipal, industrial and stock watering, instream flows, and hydropower purposes. At the same time, it provides the Secretary of the Interior with the authority to put existing, but unused storage space in federal reservoirs to use so as to mitigate the effect of the quantification of the Tribes' rights on non-Indian irrigators.

The Agreement provides a coordinated approach for the administration of tribal, Federal, and State of Idaho water rights which protect Indian, Federal, and state interests by recognizing that each governmental entity shall be responsible for administering the distribution of water to its respective constituent water users. The Agreement also provides for greater efficiency in the use of existing facilities to enhance the environment.

The Agreement recognizes an unlimited right in the Tribes to market water on the reservation and a limited but significant right to market water off the reservation. The Agreement provides that the Tribes shall have the right to transfer or lease, within the reservation, any of the water rights confirmed to them. The Agree-

ment also provides that the Tribes shall have the right to market for use off the reservation water accruing to the federal storage space held in trust for the Tribes which are not used on Indian lands. The leased water may be used for any beneficial purpose including, but not limited to, instream flows for fish and wildlife especially anadromous fish which have suffered from insufficient flows from the Snake River in recent years. We believe this water marketing capability will enable the Tribes to realize value from the water rights confirmed in the Agreement, an objective advocated on numerous occasions by this Administration.

For example, the Tribes or the United States will administer the distribution of all tribal water rights. The United States will administer the distribution of the Fort Hall Indian Irrigation Project water rights and the Fort Hall Agency water rights from the point the water is delivered to the project facilities, and will have sole responsibility for the physical operation of its Snake River diversion facilities in accordance with the Snake River Watermaster's direction. In this regard, the provisions of the Agreement are intended to leave intact the existing authority which the United States has over the operation of the Federal dams, diversion works, and related facilities, and over the delivery of project water to contractors pursuant to Federal and State law.

To affirm that the Agreement is not intended to modify the operations of the existing Fort Hall Irrigation Project or the Bureau of Reclamation's Minidoka, Palisades, and Ririe Projects, we recommend that a new subsection 11(e) be added as follows:

"Nothing in the Agreement or this Act shall be construed in any way to modify, diminish, alter, or otherwise affect Federal authority to operate the Fort Hall Indian Irrigation Project, the Minidoka Palisades and Ririe Projects of the Bureau of Reclamation, or any other Federal facility."

The State will administer the distribution of water to non-federal and non-tribal entities, and in so doing, the State of Idaho has agreed to "ensure the delivery of water" to the Tribes, the United States and other water users within any established water district. Thus, if the Tribes decide to market some of their water to benefit instream flows for anadromous fish in the Snake River below Hells Canyon, they may do so and the State will ensure that other users, including hydropower operators, do not divert or otherwise interfere with the delivery of such water to the purchaser. The State's assumption of this responsibility will avoid the problems which have been encountered elsewhere when the responsible entity has been reluctant to ensure the delivery of tribal water where there are competing water users.

The Agreement also contains significant environmental benefits. In addition to the wetlands preserved by the water exchanges in the Agreement, the United States has agreed to continue to purchase lands and grazing rights around Grays Lake. S. 2870 authorizes that $5 million be appropriated for this purpose. This water management scheme will increase the water storage capacity of the Fort Hall Indian Irrigation Project and also benefit the United States Fish and Wildlife Refuge there, which is critical habitat for the endangered whooping crane and important habitat for other migratory waterfowl. Without the Agreement, water must be re-

leased early in the spring to provide access for cattle, instead of later in the summer when it is needed for irrigation and the waterfowl which nest there year around. Finally, permitting the Tribes to market some of their water into the Lower Snake River will be of great assistance in enhancing the flows of the Snake River which are necessary for migratory salmon and steelhead fish. The Agreement expressly provides for full compliance with all applicable environmental laws.

The Department does recommend one substantive change to the legislation. It is found in section 7(c) regarding the acquisition of lands and grazing rights in the Grays Lake area. We believe that the legislation should more closely reflect the language of the Agreement signed by the Secretary. We propose the following substitute language:

"Section 7(c). There is hereby authorized to be appropriated to the United States Department of the Interior, Bureau of Indian Affairs, $5,000,000 for the acquisition of up to 9,800 acres of lands, grazing rights and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the United States Fish and Wildlife Service refuge at Grays Lake."

Nothing in the Agreement or this legislation is intended to apply to Federal agencies other than the Bureau of Indian Affairs for the Fort Hall Indian Agency, nor is it intended to apply to any other Indian tribe, other than the Shoshone-Bannock Tribes. While the agreement would preclude the Shoshone-Bannock Tribes and the United States on their behalf, from making claims for instream flows which require releases of water above Hells Canyon, this provision is not applicable to other tribes, or to the United States on behalf of other tribes or Federal agencies. Similarly, while the tribes and the United States on their behalf, agree not to object to certain water rights claims in the Upper Snake River basin, this provision is not applicable to the United States in any of its other capacities on behalf of other Federal agencies or tribes.

In conclusion, the Department is of the view that important policy goals are achieved by this Agreement. These goals include: (1) fulfillment of the United States trust responsibility by protecting Indian water resources; (2) promotion of tribal self-determination together with strong and responsible tribal governments; (3) assurance that the tribes are able to realize the full value of their water rights by providing them with "wet water" and an opportunity to "market" that water for value; (4) reduction of potential conflict between Indians and their non-Indian neighbors by mitigating some of the impacts of the full exercise of Indian reserved water rights upon non-Indians, many of whom relay on federal reclamation projects for all or part of their water supplies; and (5) negotiation of Indian water rights claims consistent with this Administration's criteria and procedures.

Mr. Chairman and members of the Committees, we support the Indian water rights settlement Agreement embodied in S. 2870 and we urge the Congress to act expeditiously and favorably on this legislation. We are committed to seeing that the tribes receive the benefits as negotiated in the Agreement. We respectfully request

you to join us in honoring this commitment to the Shoshone-Bannock Tribes. To do otherwise would continue, to quote the Honorable Senator from Arizona, Senator McCain, "that failing that is clearly evident in the long and shameful story of abuse and neglect that is the record of our treatment of Native Americans."

This concludes my prepared statement. I will be pleased to answer any questions the Committees may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by titles I and VIII, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

CONSTRUCTION OF DAM MODIFICATIONS

SEC. 101. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased by hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall include raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, [replacing the existing Shoshone Powerplant,] *constructing power generating facilities with a total installed capacity of 25.5 megawatts*, enlarging a spillway, construction of a visitor's center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: *Provided*, That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract.

[CONSERVATION AND FISH AND WILDLIFE]

RECREATIONAL FACILITIES, CONSERVATION, AND FISH AND WILDLIFE

SEC. 102. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the modification of Buffalo Bill Dam and Reservoir shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended. *The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.*

* * * * * * *

AUTHORIZATION FOR APPROPRIATIONS

SEC. 106. (a) There is hereby authorized to be appropriated beginning October 1, 1982, [for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)] *for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)* plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation, maintenance, and replacement of the works of said [modifications: *Provided,* That, such sums authorized to be appropriated for construction, operation, maintenance, and replacement shall be reduced by the amounts contributed to the project under the provisions of section 107 of this title.] *modifications.*

(b) There is also authorized to be appropriated beginning October 1, 1982, such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplant authorized by this title, together with such sums as may be required for operation and maintenance of the works authorized by section 104(a).

PUBLIC LAW 96-550

AN ACT To designate certain National Forest System lands in the State of New Mexico for inclusion in the National Wilderness Preservation System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

* * * * * * *

TITLE IV—FOR THE RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

SEC. 401. That, notwithstanding any other provision of law, the Secretary of the Interior is authorized, subject to the written consent of the Vermejo Conservancy District, to amend contract num-

bered 178r-458, dated August 7, 1952, as amended, between the Vermejo Conservancy District, located in the State of New Mexico, and the United States for the construction, operation, and maintenance of the Vermejo reclamation project, to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the district of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project facilities serving the Vermejo Conservancy District: *Provided*, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries, including the Maxwell National Wildlife Refuge, and in accordance with the authorized project purposes: *Provided further*, That with the exception of assistance, if needed, under the Disaster Relief Act of 1974, as amended, the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. [Transfer of project facilities to the district shall be without any additional consideration in excess of the existing repayment obligation of the district, and shall include any related lands or interest in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements.] *Effective as of the date written consent of the Vermejo Conservancy District to amend the Contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1990, and expiring January 17, 1992, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United*

States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract No. 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project. Any amended contract which provides for deferral of the district's repayment obligation shall provide that the obligation shall continue in effect until repaid or for the useful life of the existing facilities, and the Secretary shall provide for a flexible plan of repayment of the remaining obligation of the district according to the district's ability to repay as determined by the Secretary. Determinations of ability to repay shall include water deliveries achieved in a given year, as well as such other factors as the Secretary considers to be pertinent.

APPENDIX 1

Preliminary Settlement Agreement as Modified by the Ratification Agreement

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Ratification Agreement by the United States of America

Whereas, on May 23, 1989, the Pyramid Lake Paiute Tribe of Indians (Tribe) and Sierra Pacific Power Company (Sierra) entered into a Preliminary Settlement Agreement, which contemplates the use of federally owned storage reservoirs in the Truckee River Basin in California for storage of the waters available under the described water rights for fishery and municipal and industrial purposes;

Whereas, a condition of the effectiveness of the Preliminary Settlement Agreement (see paragraph 29(g) of Article III of the Peliminary Settlement Agreement) is that the United States would become a party to the agreement and accept, approve and become bound by all of its terms and conditions to the same extent as the Tribe; and

Whereas, the United States has reviewed the terms and conditions of that Preliminary Settlement Agreement and found them to be generally acceptable; and

Now therefore, the United States by its authorized official, ratifies, confirms and agrees by this instrument to become a party to that Agreement, and, subject to the following clarifications and understandings, accepts, approves, and agrees to be bound by the substantive terms and conditions contained in the Preliminary Settlement Agreement to the same extent as the Tribe.

A. Attached hereto and incorporated herein as Exhibit "1" is a clarified and revised Preliminary Settlement Agreement which includes the clarifications to be made to that Agreement as a result of this ratification. The United States shall be bound only by the terms of Exhibit 1 and not by any other version of the Preliminary Settlement Agreement contingent upon the passage of Title II of the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act." The United States shall be bound only by the substantive terms and conditions contained in the Preliminary Settlement Agreementand not by the Recitals contained therein.

B. (1) The United States reserves the right to cancel in full and withdraw this Ratification Agreement if either the Tribe or Sierra attempts to rely upon condition (a) of Section 29 of Article III of the Preliminary Settlement Agreement in Whole or in part.

(2) The Operating Agreement referred to in paragraph 29(f) of Article III of the Preliminary Settlement Agreement shall be construed to refer to the Operating Agreement, if any, required by

Title II of the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

(3) As to subsection (j) of Section 29 of Article III of the Preliminary Settlement Agreement, the United States shall not be bound by any of the provisions thereof in any respect unless and until it, through an authorized official, enters into a binding agreement relating to the subject matter thereof, but only to such extent and not otherwise. The discretion of the United States or its officers to enter into any such agreement shall not be impaired or affected in any degree by these provisions, and it shall remain discretionary with the United States as to whether to enter into any such Agreement and which terms such Agreement, if any, shall include, subject to the terms, conditions and limitations of all applicable laws.

C. Sierra Pacific and the Tribe must agree in carrying out the terms and provisions of this Agreement to abide by and comply with all applicable state and federal laws and to abide by all lawful regulations issued by the Secretary.

Signed on behalf of the United States this day of , 1990.

UNITED STATES OF AMERICA,
(By) ——— ———,
On behalf of the Secretary of the Interior.

This ratification is agreed to and accepted this day of , 1990 in full compliance with Section 29(g) of Article III of the Preliminary Settlement Agreement.

PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
(By) JOSEPH H. ELY,
Tribal Chairman.
SIERRA PACIFIC POWER COMPANY,
(By) PHILIP G. SEGES,
President, Westpac Utilities, a division of Sierra Pacific Power Company.

PRELIMINARY SETTLEMENT AGREEMENT

This agreement is entered into this day of , between the United States of American ("United States"), Pyramid Lake Paiute Tribe of Indians ("Tribe") and Sierra Pacific Power Company ("Sierra").

I. DEFINITIONS

As used in this Preliminary Agreement:

1. "Critical Drought Period" means a hydrologic period during which the water supplies available from the Truckee River are limited to the same or similar extent as the water supplies available from the Truckee River under a repetition of hydrologic conditions which existed from 1928 to 1935.

2. "Drought Conditions" means conditions under which Sierra's Normal Water Supplies are not sufficient to satisfy Sierra's normal water year demand, but in no event shall Drought Conditions exist when a Drought Situation does not also exist.

3. "Drought Situation" means a situation under which it appears, based on the April 1 seasonal Truckee River runoff forecast and assuming median precipitation after April 1, either that there will not be sufficient unregulated natural runoff and pooled water in storage in the Truckee River Reservoirs to meet the Floriston Rates through the following October 31, or that the level of Lake Tahoe, excluding all Firm M&I, Non-Firm M&I and Fishery Credit Water, will be below 6223.5 feet Lake Tahoe Datum on or before the following November 15.

4. "Emergency or Repair Conditions" means an unexpected circumstance when the demands of Sierra's water customers cannot be met from Sierra's Normal Water Supplies or a scheduled alteration or repair which prevents the use of some or all of Sierra's Normal Water Supplies to meet the demands of Sierra's water customers.

5. "Firm M&I Credit Water" means the water that is stored in Stampede Reservoir and can be utilized under the terms and conditions of this Agreement for the purpose of providing water under Drought Conditions or Emergency or Repair Conditions for M&I purposes within Sierra's Service Area and which shall not spill or be subject to evaporation losses unless it is the only remaining water in Stampede Reservoir.

6. "Fishery Credit Water" means the water that can be stored and utilized under the terms and conditions of this Agreement for the benefit of the Pyramid Lake Fishery.

7. "Floriston Rates" means the rate of flow of the Truckee River at the head of the diversion penstock at Floriston, California (but measured at the USGS Stream Gaging Station near Farad, California) consisting of an average flow of 500 cubic feet of water per second each day during the period commencing March 1 and ending September 30 of any year and an average flow of 400 cubic feet of water per second each day during the period commencing October 1 and ending the last day of the next following February of any year.

8. "Former Agricultural Water Right" means a water right from the Truckee River and its tributaries which Sierra now has or will acquire as described in Section 2 of Article III of this Agreement and which was originally established for agricultural use and has been or will be acquired or leased and transferred to or otherwise provided for M&I use.

9. "Lower Truckee River" means the Truckee River below Derby Dam.

10. "M&I" means municipal, industrial and domestic.

11. "Non-Firm M&I Credit Water" means any water other than Firm M&I Credit Water that can be stored in any Truckee River Reservoir and utilized under the terms and conditions of this Agreement under Drought Conditions or Emergency or Repair Conditions for M&I purposes within Sierra's Service Area.

12. "Orr Ditch Decree" means the Final Decree entered on September 8, 1944, in the case of *United States* v. *Orr Water Ditch Co.*, et al., Equity No. A-3, in the United States District Court for the District of Nevada.

13. "Prosser Creek Fishery Water" means the water in Prosser Creek Reservoir that may be committed by the United States for

the benefit of the Pyramid Lake Fishery and is not needed to carry out the Tahoe-Prosser Exchange pursuant to the Agreement of June 15,1959.

14. "Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui *(Chasmistes cujus)* and the Lahontan cutthroat trout *(Salmo clarki henshawi).*

15. "Remaining Waters of the Truckee River" means the waters of the Truckee River system other than the following: (i) the waters of the Lake Tahoe Basin allocated to California and Nevada; (ii) the waters of the Truckee River and its tributaries allocated to California; and (iii) the waters of the Truckee River and its tributaries allocated to Nevada to which valid and perfected rights attach under applicable law.

16. "Sierra's Normal Water Supplies" means the water sources and supplies Sierra has and would have to meet the M&I needs of its customers in the absence of this Agreement, including the water sources and supplies described in Section 2 of Article III of this Agreement and any supplies obtained or developed pursuant to Section 3 of this Agreement, but excluding all of the water sources and supplies described in Section 21 of Article III of this Agreement and 7,500 acre feet of water above the outlet facilities of Independence Lake.

17. "Sierra's Privately Owned Stored Water" means the stored water which Sierra now has or may hereafter acquire the right to use in Donner Lake and Independence Lake.

18. "Sierra's Service Area" means the retail and wholesale certificated boundaries as may be established from time to time by the Public Service Commission of Nevada as the territory in which Sierra is entitled to sell or to distribute water.

19. "Spawning Flows in the Lower Truckee River" means the water which provides suitable conditions for fish passage, maintaining habitat, attracting, egg-taking, spawning and/or nursing of cui-ui and/or Lahontan cutthroat trout in the Lower Truckee River.

20. "Stampede Project Water" means the water that is currently captured and impounded in Stampede Reservoir and is released to support Spawning Flows in the Lower Truckee River.

21. "Truckee River Agreement" means the Agreement dated July 1, 1935, which was approved, adopted and incorporated in the *Orr Ditch* Decree.

22. "Truckee River General Electric Co. Decree" means the Final Decree entered on June 4, 1915 in the case of *United States* v. *Truckee River General Electric Co.,* No. 14861, in the United States District Court for the Northern District of California which was transferred on February 9, 1968 to the United States District Court for the Eastern District of California and is now designated No. S–643.

23. "Truckee River Reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservior, Prosser Creek Reservior and Stampede Reservior.

II. AGREEMENT

Section 1. *Waiver of Single Purpose Hydroelectric Water.* For purposes of this Agreement only, Sierra agrees to waive its rights to require releases or pass throughs of water from the Truckee River Reservoirs solely for the generation of hydro-electric power pursuant to the Truckee River General Electric Co. Decree and Claim Nos. 5, 6, 7, 8 and 9 of the Orr Ditch decree. The water to which Sierra's rights are waived pursuant to this Section shall become Fishery Credit Water subject to the limitations set forth in Section 27 of Article III of this Agreement and shall be held in storage in the Truckee River Reserviors and released for the sole use and benefit of the Pyramid Lake Fishery.

Section 2. *Water Rights Required for New Service Commitments.* Sierra agrees that it will not issue new service commitments unless such commitments are accompanied by such water rights provided directly to Sierra or through a municipal entity as are necessary to meet the new water service requirement. Sierra shall require new service commitments which rely on surface water rights to provide water rights at the rate of not less than 1.72 acre feet of water rights for every acre foot of commitment until such time as Sierra has committed to the amount of water needed to meet a normal year demand of 80,000 acre feet within Sierra's Service Area. After the amount of water is provided to meet Sierra's normal year commitment of 80,000 acre feet and until such time as Sierra has committed to the amounts of water required to meet a normal water year demand of 119,000 acre feet within Sierra's Service Area, the water rights provided to meet new service commitments in reliance upon surface water rights may be reduced to not less than 1 acre foot of water rights for every acre foot of new service commitment; provided, however, that if Sierra is able to develop the water supply referred to in Section 3(b) of Article III of this Agreement, then the ratio of new service commitments in reliance on surface water rights shall be not less than 1.11 acre feet of water rights for every acre foot of new service commitment.

Section 3. *Development of Additional M&I Water Supplies.* Sierra agrees to use its best efforts to implement the following measures on a schedule to be agreed upon in the operation agreement referred to in Section 29(f) of Article III of this Agreement, to the extent legally, technically and economically feasible, to help meet the water supply demands of its customers as Sierra's total normal year water demand increases to a maximum normal year demand of 119,000 acre feet:

(a) Development of the capacity to pump 2,000 acre feet of water annually from the Sparks pit source under Drought Conditions or Emergency or Repair Conditions described in detail in Sierra's 1988–2008 Water Resource Plan and the September 1, 1989 Update;

(b) The right to develop an additional 3,000 acre feet annually of groundwater from the Truckee Meadows groundwater basin (over and above the currently approved 12,616 acre feet of ground-water available from the Truckee Meadows groundwater basin) described in detail in Sierra's 1988–2008 Water Resource Plan and the September 1, 1989 Update; and

(c) Acquisition and utilization of the right of the Truckee-Carson Irrigation District to store and use water in Donner Lake, described in detail in Sierra's 1988–2008 Water Resource Plan and the September 1, 1989 Update.

The Tribe and the Secretary waive any and all rights or claims they may have to object to Sierra's implementation and use of the water supply measures described in this Section or Section 21 of Article III.

The measures described in Sections 3(a) and 3(c) of Article III shall not be included in, and shall be in addition to, the water rights Sierra obtains to meet new service commitments pursuant to Section 2 of Article III of this Agreement.

Section 4. *Storage of Firm and Non-Firm M&I Credit Water in Truckee River Reservoirs.* Sierra shall have the right to establish Firm and Non-Firm M&I Credit Water by utilizing the Truckee River Reservoirs to store or retain its Privately Owned Stored Water and the consumptive use portion of Former Agricultural Water Rights which are not utilized to supply the demands of its customers in any given year for later use under Drought Conditions or Emergency or Repair Conditions for M&I purposes. Such water may be accumulated in those Reservoirs or may be transferred between those Reservoirs through acre foot for acre foot exchanges. Sierra agrees to use the full extent of the consumptive use portion of its Former Agricultural Water Rights which are not utilized to supply the demands of its customers in any given year to establish Firm or Non-Firm M&I Credit Water pursuant to the terms and conditions of this Agreement.

Section 5. *Use of Firm and Non-Firm M&I Credit Water.* Sierra may use Firm M&I Credit Water and Non-Firm M&I Credit Water to supply the demands of its customers under Drought Conditions to meet its normal water year demand, up to a maximum of 119,000 acre feet, less the sum of the quantities of water actually conserved through the implementation of the measures required by Section 29(e) of Article III of this Agreement and the additional water supplies described in Section 3 of Article III of this Agreement and implemented in accordance with the operating agreement described in Section 29(f) of Article III of this Agreement. Sierra also may use Firm M&I Credit Water and Non-Firm M&I Credit Water to meet the demands of its customers under Emergency or Repair Conditions.

The Firm M&I Credit Water, the Non-Firm M&I Credit Water, and the 7,500 acre-feet of Fishery Credit Water in Stampede Reservoir available under worse than critical drought conditions pursuant to Section 21 of Article III, shall all be used only to supply municipal and industrial needs when Drought Conditions or an Emergency or Repair Condition exists, or as required to be converted to Fishery Credit Water pursuant to Section 11 of Article III and none of these quantities of water shall be used for normal year water supply of municipal and industrial needs except when an Emergency or Repair Condition exists.

Section 6. *Calculation of Base Amounts of Firm and Non-Firm M&I Credit Water.* The base amount of Firm M&I Credit Water Sierra may store pursuant to Section 4 of Article III of this Agreement shall vary from 2,000 acre feet to 12,000 acre feet in relation

to the amount of water needed to satisfy the normal water demand of Sierra's customers as shown on Exhibit "A". The base amount of Non-Firm M&I Credit Water Sierra may store pursuant to Section 4 of Article III of this Agreement shall vary from 4,000 acre feet to 20,000 acre feet in relation to the amount of water needed to satisfy the normal water year demand of Sierra's customers as shown on Exhibit "B" and as the amount of water depleted from the Truckee River, its tributaries and groundwater basins within California increases as shown on Exhibit "C". The amount of Non-Firm M&I Credit Water shown on Exhibit "B" shall be multiplied by the percentage factor shown on Exhibit "C" for the amount of water being depleted in a normal year from the Truckee River, its tributaries and groundwater basins within California at the time the calculation is made. The product so obtained shall be the base amount of Non-Firm M&I Credit Water which Sierra may store pursuant to Section 4 of Article III of this Agreement; provided, however, that the base amount of Non-Firm M&I Credit Water which Sierra may store shall not be less than 4,000 acre feet. Sierra may commence storing Firm and Non-Firm M&I Credit Water pursuant to the provisions of this Agreement when this Agreement becomes effective.

Section 7. *Status of M&I Credit Water.* All of Sierra's M&I Credit Water stored in Stampede Reservoir at any given time up to the base amount of Firm M&I Credit Water determined in accordance with Section 6 of Article III of this Agreement shall be considered Firm M&I Credit Water and shall have all of the attributes of Firm M&I Credit Water. All of Sierra's remaining M&I Credit Water stored in Stampede Reservoir and all of its M&I Credit Water in other Truckee River Reservoirs shall be considered Non-Firm M&I Credit Water.

Section 8. *Annual Adjustment of M&I Credit Water.* The amounts of Firm and Non-Firm M&I Credit Water in storage in the Truckee River Reservoirs shall be adjusted once annually not later than April 15 of each years based upon whether or not a Drought Situation exists utilizing the April 1 seasonal runfoff forecast. Following that annual adjustment, during the ensuing 12 months and whether or not a Drought Situation exists, Sierra shall have the right to utilize the available space in the Truckee River Reservoirs to store its Privately Owned Stored Water and the consumptive use portion of Former Agricultural Water Rights which are not needed to supply the demands of its customers to establish additional amounts of M&I Credit Storage in excees of the base amounts of Firm and Non-Firm M&I Credit Water set forth in Section 6 of Article III of this Agreement.

Section 9. *Exchanges to Permit Firm M&I Credit Water to be Stored in Stampede Reservoir and to Avoid Unnecessary Spill or Displacement.* The Tribe, the United States and Sierra agree to make exchanges and to take such other measures as are necessary to permit Firm M&I Credit Water to be stored in Stampede Reservoir up to the base amount determined in accordance with Section 6 of Article III and insure, to the maximum extent possible, that Firm M&I Credit Water, Non-Firm M&I Credit Water, Fishery Credit Water and Stampede Project Water will be available at the appropriate times and will not be displaced or caused to spill.

Section 10. *Storage Priorities—Non-Drought Situation.* Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, the Tribe and the United States agree as follows: (a) that Sierra shall have the first right to store Firm M&I Credit Water in Stampede Reservoir from the following July 1 through December 31 up to the base amount determined in accordance with Section 6 of Article III of this Agreement; (b) that Sierra may displace Fishery Credit Water in Stampede Reservoir and may displace Stampede Project Water from July 1 through the following December 31 of each year to the extend necessary to achieve and not exceed the base amount of Firm M&I Credit Water in storage; and (c) that Sierra may accumulate additional Non-Firm M&I Credit Water in Truckee River Reservoirs other than Stampede Reservoir to the extent Sierra's total Firm M&I Credit Water is less than the base amount of Firm M&I Credit Water determined pursuant to Section 6 of Article III. Such additional Non-Firm M&I Credit Water may displace Fishery Credit Water from July 1 through the following December 31, shall spill or be reduced for precautionary drawdowns after Fishery Credit Water and shall share the net evaporation losses proportionately with any other water in all such reservoirs except Lake Tahoe.

Section 11. *Conversion of M&I Credit Water to Fishery Credit Water—Non-Drought Situation.* Whenever based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, the amount of Non-Firm Credit Water established in accordance with Section 8 of Article III of this Agreement in excess of the base amount determined in accordance with Section 6 of Article III of this Agreement shall become Fishery Credit Water. Sierra shall have the right to determine and identify the location of the excess Non-Firm M&I Credit Water stored in the Truckee River Reservoirs which shall become Fishery Credit Water.

Section 12. *Credit Storage Rules—Non-Drought Situation.* Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, then for the ensuing 12 months, the following rules shall apply: (a) the Fishery Credit Water and Non-Firm M&I Credit Water shall share the net evaporation losses proportionately with any other water in Truckee River Reservoirs other than Lake Tahoe; (b) Non-Firm M&I Credit Water shall be the first water to spill from Stampede Reservoir; and (c) except as provided in Section 10 of Article III of this Agreement, Non-Firm M&I Credit Water and Fishery Water shall spill or be reduced for precautionary drawdowns proportionately from all other Truckee River Reservoirs.

Section 13. *Displacement of Fishery Credit Water and Stampede Project Water—Drought Situation.* Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, the Tribe and the United States agree as follows: (a) to allow Sierra to displace Fishery Credit Water in Stampede Reservoir or Stampede Project Water from April 15 to July 1 to the extent necessary to enable Sierra to store up to 6,000 acre feet of the consumptive use portion of Former Agricultural Water Rights; (b) to allow Sierra to displace Fishery Credit Water in Stampede Reservior or Stampede Project Water from July 1 to the following April 1 to the extent necessary to enable Sierra to store the base amounts of Firm and

Non-Firm M&I Credit Water determined in accordance with Section 6 of Article III of this Agreement, except that for this purpose only the base amount of Non-Firm M&I Credit Water shall not be adjusted by the Exhibit "C" percentage reduction based upon the amount of water depleted from the Truckee River and its tributaries and groundwater basins in California; and (c) to allow Sierra to displace Fishery Credit Water in Truckee River Reservoirs other than Stampede Reservoir to the extent necessary to enable Sierra to increase the amounts of Firm and Non-Firm M&I Credit Water to the maximum extent possible without regard to the limitations of Section 6 of Article III of this Agreement.

Section 14. *Carryover of Firm and Non-Firm M&I Credit Storage—Drought Situation.* Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, Sierra shall have the right to retain and carry over until the following year all of its Firm M&I Credit Water up to the base amount determined in accordance with Section 6 of Article III and all of its Non-Firm M&I Credit Water including the excess Non-Firm M&I Credit Water established in accordance with Sections 8 and 13 of Article III of this Agreement. All such excess Non-Firm M&I Credit Water may be retained and carried over and may continue to be increased pursuant to Section 8 and 13 of Article III of this Agreement until, based upon a subsequent April 1 seasonal runoff forecast, a Drought Situation no longer exists.

Section 15. *Credit Storage Rules—Drought Situation.* Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, for the ensuing 12 months the Fishery Credit Water in all Truckee River Reservoirs in which it is stored shall be the first water to spill or be reduced for precautionary drawdowns. Non-Firm M&I Credit Water and Fishery Credit Water shall share the net evaporation losses proportionately from all Truckee River Reservoirs in which they are stored except Lake Tahoe.

Section 16. *Use of Sierra's Privately Owned Stored Water.* Sierra's Privately Owned Stored Water may be used to supply the demands of its customers in normal water years, under Drought Conditions and under Emergency or Repair Conditions. Sierra agrees to use all available Donner Lake water and all but 7,500 acre feet of its water above the outlet facilities of Independence Lake before using any Firm M&I or Non-Firm M&I Credit Water or the remaining 7,500 acre feet in Independence Lake to meet the needs of its customers under Drought Conditions or Emergency or Repair Conditions. Except as provided in Section 22 of Article III of this Agreement, all of Sierra's Privately Owned Stored Water that is not carried over or used to meet the demands of its customers in normal water years, under Drought Conditions or under Emergency or Repair Conditions shall be used if legally and physically possible to establish Firm or Non-Firm M&I Credit Water pursuant to the terms and conditions of this Agreement.

Section 17. *Sierra to Control Privately Owned Stored Water.* The quantities of Firm and Non-Firm M&I Credit Water stored, held and used pursuant to this Agreement shall not include, and shall be in addition to, the quantities of Sierra's Privately Owned Stored Water in Donner Lake and Independence Lake at any given time. Sierra retains the sole right to control and manage Sierra's Pri-

vately Owned Stored Water in Donner Lake and Independence Lake subject to all applicable laws, conditions and regulations.

Section 18. *Exchanges of Fishery Credit Water and Prosser Creek Fishery Water to Enable Storage of M&I Credit Water in Stampede Reservoir.* The Tribes and the United States agree to allow exchanges of their rights to store and use Fishery Credit Water and Prosser Creek Fishery Water for Sierra's rights to store and use Non-Firm M&I Credit Water so as to enable Sierra to store the maximum amount of its Firm M&I Credit Water and Non-Firm M&I Credit Water in Stampede Reservoir. When releases of Stampede Project Water would otherwise be made, the Tribe and the United States agree to allow exchanges to enable Sierra to create Firm or Non-Firm M&I Credit Water in Stampede Reservoir.

Section 19. *Additional Voluntary Exchanges of Credit Water.* The Tribe, the United States and Sierra may agree to additional voluntary exchanges involving their respective rights and their Fishery, Firm M&I and Non-Firm M&I Credit Water as they may deem desirable and in furtherance of the objectives of this Agreement.

Section 20. *Use of Fishery Credit Water.* Subject to the provisions of Section 22 of Article III, all of the Fishery Credit Water established pursuant to this Agreement shall be stored in Truckee River Reservoirs and shall be utilized to provide Spawning Flows in the Lower Truckee River.

Section 21. *Additional Water—Worse Than Critical Drought Period.* To meet the demands of its customers in the event of water supply conditions which are worse than those experienced during the Critical Drought Period, after exhausting Sierra's Normal Water Supplies, the 7,500 acre feet of water above the outlet facilities of Independence Lake to the extent permissible under then applicable law, and all Firm and Non-Firm M&I Credit Water, Sierra shall have the right to obtain sufficient water to meet its normal year water demand, up to a maximum of 119,000 acre feet, less the sum of the quantities of water conserved through the implementation of Section 29(e) of Article III of this Agreement and the additional water supplies described in Section 3 of this Agreement, from the following sources in the following order:

(a) Pump up to 5,000 acre feet of water from below the outlet works of Independence Lake to the extent permitted after making all necessary applications for such use; provided that if such water is not made available at the time required to satisfy the demands of Sierra's customers, Sierra may utilize the water supplies available in Section 21(b) of Article III of this Agreement to the extent required;

(b) Utilize as necessary a maximum of 7,500 acre feet of Fishery Credit Water in Stampede Reservoir; and

(c) Pump water from Lake Tahoe in accordance with, and to the extent permissible under, then applicable law.

Section 22. *Establishment of Fishery Credit Water for Worse Than Critical Drought Period.* As soon as practicable after this Agreement becomes effective, the Tribe and the United States agree to take all measures necessary to provide and hold in Stampede Reservoir the 7,500 acre feet of Fishery Credit Water referred to in Section 21(b) of Article III of this Agreement subject to the same terms and conditions as Firm M&I Credit Water utilizing the

first Fishery Credit Water obtained pursuant to Section 11 of Article III of this Agreement. Once the 7,500 acre feet is in storage, it shall not be used for the benefit of the Pyramid Lake Fishery, and spill and evaporation losses and minimum instream flow requirements shall not be charged against it unless it is the only water in Stampede Reservoir. Sierra may, at its option, fill the 7,500 acre feet provided in Section 21(b) of Article III directly from Sierra's Privately Owned Stored Water. Any of the water referred to in Section 21(b) of Article III that is used by Sierra shall be replaced by the Tribe and the United States as soon as practicable.

Section 23. *Credit Water To Have Attributes of Privately Owned Stored Water.* All Fishery Credit Water and Firm and Non-Firm M&I Credit Water stored pursuant to this Agreement shall have all the attributes of privately owned stored water under the Truckee River Agreement.

Section 24. *Development of Additional M&I Water Supplies Above 119,000 Acre Feet of Demand.* Sierra may obtain additional supplies of water to meet the demands of its customers above 119,000 acre feet per year, either after normal demand reaches 119,000 acre feet or prior thereto, through: (i) the acquisition of water rights in addition to those provided under Sections 2 and 3 of Article III of this Agreement; (ii) the utilization of water from hydrologic basins outside the Truckee River Basin; (iii) the development of Truckee River groundwater basins in Nevada beyond the 15,616 acre foot supply referenced in Section 3 of Article III of this Agreement to the extent that Sierra has added customers through expansion of the boundaries of its Service Area and acquired a water supply adequate to meet full demands of the new Service Area both in normal water years and during Drought Conditions; and (iv) the implementation of other measures. Any supplies developed pursuant to this Section shall not adversely affect the rights secured to the Tribe or the United States under this Agreement, any right of the Tribe or the United States to the Remaining Waters of the Truckee River, any rights secured to the Tribe or the United States under the settlement legislation which may be enacted by the Congress, or any other rights that the United States or the Tribe may claim. Such supplies must also comply with such state, local and federal permits and approvals as may be required under the then existing and applicable laws, rules and regulations. Provided, however, that the water supplies made available to Sierra pursuant to other Sections of this Agreement may only be used to the extent provided in Sections 5, 16 and 21 of Article III of this Agreement.

Section 25. *Use of Water Outside Truckee River Basin.* Sierra may utilize outside of the Truckee River Basin any of its existing Truckee River water rights or any such rights that it may acquire in the future. For any use of water outside the Truckee River Basin, except the approximately 3,000 acre feet of water committed to the Stead, Silver Lake and Golden Valley areas prior to the date of this Agreement, additional water rights shall be acquired in order to insure that return flows to the Truckee River are no less than they would have been if the water had been used in the Truckee River Basin.

Section 26. *Additional Measures to Carry Out Agreement.* Sierra, *the United States* and the Tribe agree to do those things as may be reasonably necessary to carry out the terms and conditions of this Agreement.

Section 27. *Protection of Existing Perfected Rights.* Nothing in this Agreement shall be construed to:

(a) Alter or conflict with any recognized and perfected right of any other person or entity to use the waters of the Truckee River or its tributaries including, but not limited to, the rights of landowners within the Newlands Project for delivery of the waters of the Truckee River to Derby Dam and for diversion of such waters at Derby Dam pursuant to the Orr Ditch Decree or any applicable law;

(b) Affect the right of Sierra to acquire and use for M&I purposes in accordance with this Agreement any recognized and perfected rights to waters of the Truckee River or its tributaries held by any person or entity;

(c) Affect Sierra's right to generate power at its hydroelectric plants on the Truckee River with any water rights it has or may acquire other than the rights to require releases of water from the Truckee River Reservoirs solely for hydroelectric power generation which are waived pursuant to Section 1 of Article III of this Agreement;

(d) Affect the quantity of water that is retained or carried over in storage in, or released from, the Truckee River Reservoirs pursuant to the Orr Ditch Decree and the Truckee River Agreement to satisfy the non-hydroelectric water rights recognized in the Orr Ditch Decree except for the consumptive use portion of Former Agricultural Water Rights which may be stored pursuant to the provisions of this Agreement;

(e) Affect the operation of any Truckee River Reservoirs to satisfy any applicable dam safety or floor control requirements;

(f) Affect the implementation of the Tahoe-Prosser Exchange Agreement of June 15, 1959;

(g) Result in an abandonment or forfeiture of the water rights of any party hereto; or

(h) Evidence any intention of any party hereto to abandon or forfeit any water rights.

Section 28. *Water Master May Require Releases of Credit Water to Protect Existing Perfected Rights.* Nothing in this Agreement is intended to affect the power of the Orr Ditch Court and the Water Master under the administrative provisions of the Orr Ditch Decree to ensure that the owners of the recognized and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch Decree. To the extent that implementation of this Agreement results in owners not receiving the amount of water to which they are legally entitled under the Orr Ditch Decree, the United States, the Tribe and Sierra Pacific agree that the owners' water will be made up through releases of water stored in Truckee River Reservoirs pursuant to this Agreement utilizing the water of the party or parties benefitting from such storage.

Section 29. *Conditions for Agreement to be Effective and Operative.* The provisions of this Agreement shall not take effect and this

Agreement shall not be operative unless and until each of the following has occurred:

(a) The Congress of the United States has enacted, and the President of the United States has signed, Pyramid Lake and Truckee River settlement legislation whose terms and provisions are satisfactory to the Tribe and Sierra;

(b) The Legislature of Nevada has enacted, and the Governor of Nevada has signed, legislation which repeals or substantially modifies N.R.S. 704.230 to permit installation of water meters on all old and new residences within Sierra's Service Area, excluding existing unmetered apartments and condominium units or complexes which have all outdoor irrigation use metered, and to permit water rates based on the amount of water delivered to each customer;

(c) A plan for financing and installing water meters in Sierra's Service Area has received required governmental approvals and there are no foreseeable obstacles to its implementation;

(d) Sierra has proposed, and the Nevada Public Service Commission has approved, an inverted block water rate structure which provides financial incentives for the conservation of water by Sierra's residential customers;

(e) All required governmental approvals have been obtained for a mandatory water conservation plan designed to produce annual water savings of 10 percent or more during the ensuing year whenever it appears, based on the April 1 seasonal Truckee River runoff forecast, that a Drought Situation exists;

(f) An operating agreement has been executed at least by the United States, the Tribe and Sierra whose provisions include: (i) all of the necessary details required for the administration and implementation of this Agreement; and (ii) the consequences in the event that any provisions of this Agreement cannot be fulfilled for reasons that are beyond the control of the parties hereto such as, by way of example, final outcomes of administrative proceedings or litigation involving other parties which are not consistent with the terms or conditions of this Agreement;

(g) The United States becomes a party to this Agreement and accepts, approves and becomes bound by all of its terms and conditions to the same extent as the Tribe;

(h) All contracts and governmental approvals required to carry out the terms and provisions of this Agreement and the operating agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water as provided in this Agreement have been executed;

(i) This Agreement and the operating agreement referred to in subsection (f) above have been submitted to the Court in *United States* v. *Orr Water Ditch Co.*, Equity No. A–3, (D. Nev.), and by the Court in *United States* v. *Truckee River General Electric Company*, Civil No. 14861 (now S–643) (E.D. Cal.), and found to be consistent with those Decrees or otherwise approved.

(j) Sierra and the United States have reached agreement on: (i) the compensation Sierra shall pay to the United States for the right to use the storage capacity in the Truckee River Reservoirs; (ii) arrangements to compensate Sierra for the reduction in the amount of hydroelectric power generated at its four run of the river hydroelectric plants on the Truckee River above Reno which

will result from the implementation of this Agreement; and (iii) indemnification with respect to water damage resulting from the operation of the dam and controlling works at the outlet of Lake Tahoe; and

(k) All pending litigation or the portions of pending litigation involving the Tribe, Sierra and the United States have been resolved to their mutual satisfaction.

At an appropriate time, the Tribe, the United States and Sierra agree to execute a written document which shall either confirm or deny that the conditions set forth in this Section have been satisfied.

Section 30. *Notices.* All notices and other communications required or permitted to be given by this Agreement must be in writing and will be deemed given on the day when delivered in person or on the third business day after the day on which mailed from within the United States of America by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Tribe: Pyramid Lake Paiute Tribal Chairman, P.O. Box 256, Nixon, Nevada 89424.

If to Sierra: Philip G. Seges, President, Sierra Pacific Power Company, P.O. Box 10100, Reno, Nevada 89520.

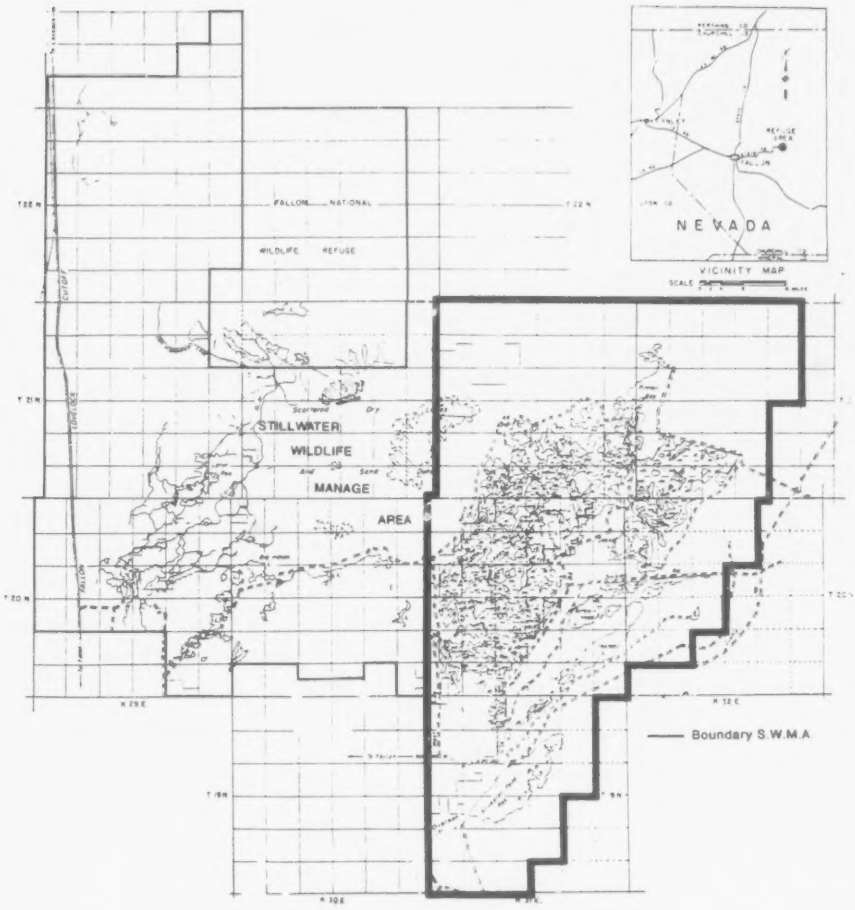
If to United States: Lahontan Basin Project Manager, P.O. Box 640, 705 North Plaza, Carson City, Nevada 89702, or to such other place as either party may from time to time designate in a written notice to the other.

Section 31. *Captions For Convenience Only.* The captions of the Sections of this Agreement are for convenience only and shall not in any way affect the construction of the terms and conditions of this Agreement.

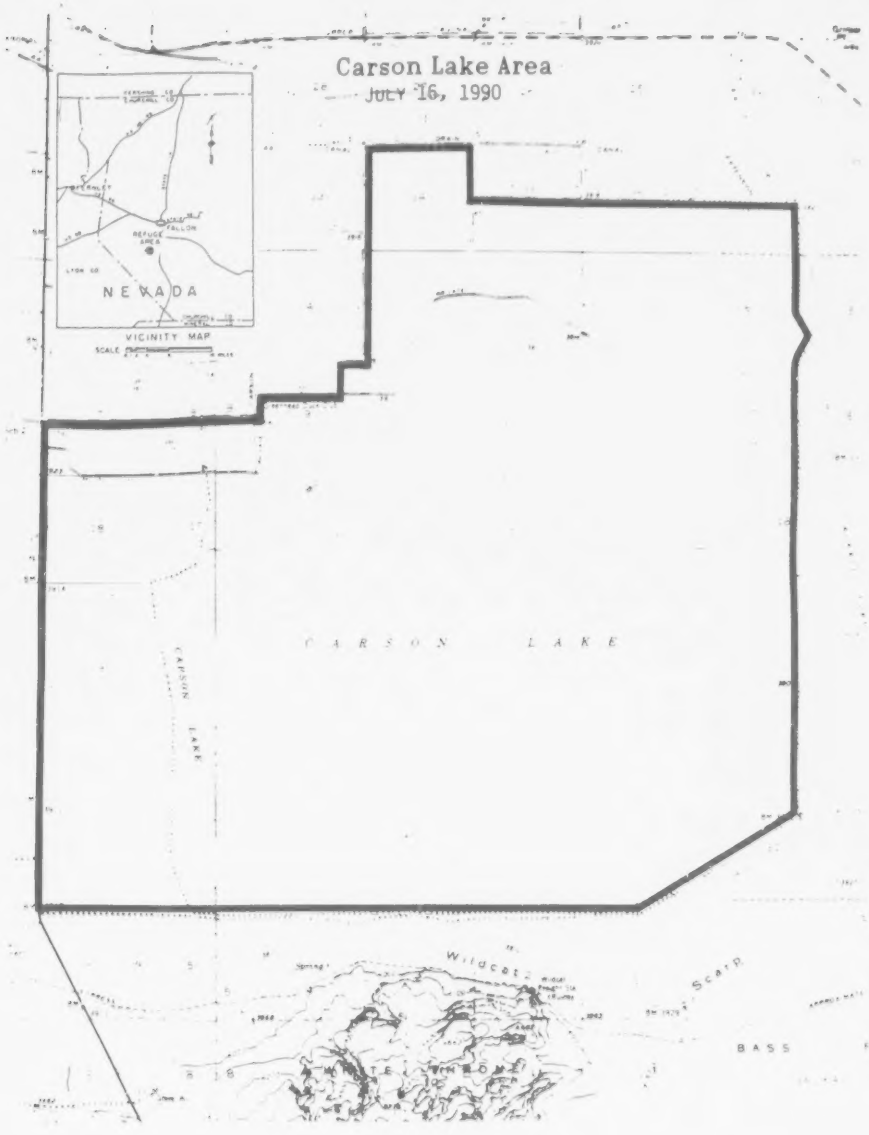
Section 32. *Entire Agreement.* This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between them other than as herein set forth. No change or modification of this Agreement or of any of the provisions hereof shall be valid or effective unless the same is in writing and signed by the parties hereto. No alleged or contended waiver of any of the provisions of this Agreement shall be valid or effective unless signed in writing by the party against whom it is sought to be enforced.

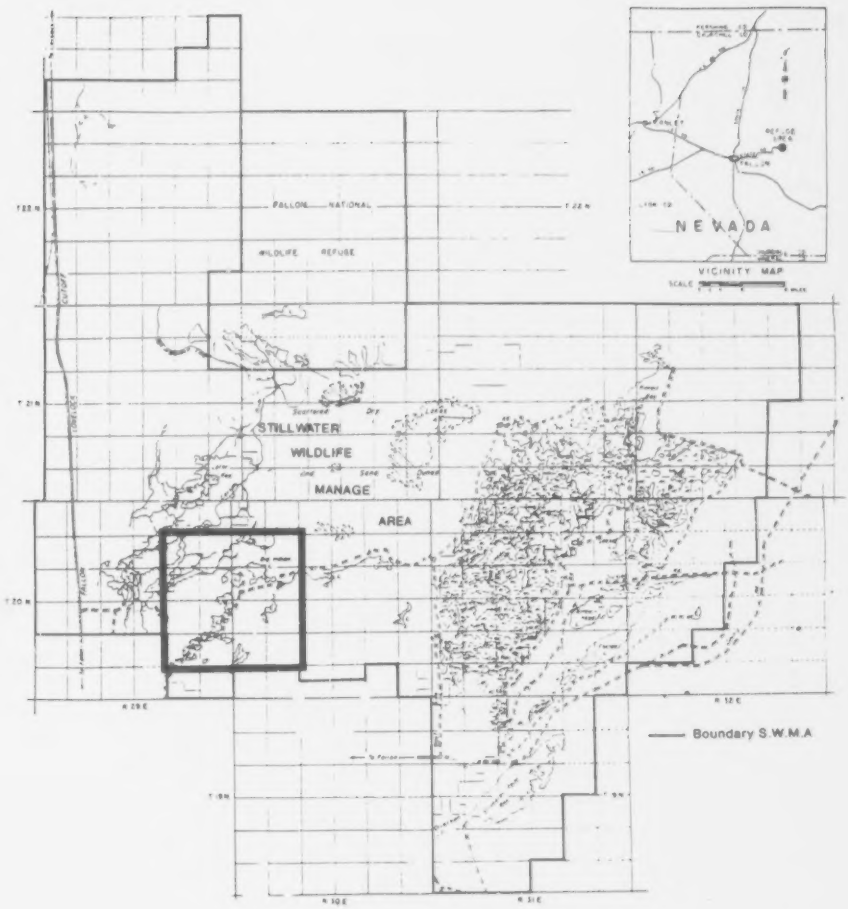
APPENDIX 2

Maps



Proposed
Stillwater National Wildlife Refuge
July 16, 1990


Carson Lake Area
July 16, 1990
NEVADA
VICINITY MAP
CARSON LAKE
Wildcat
Scarp
BASS



Indian Lakes Area

JULY 16, 1990